

Jack Weisbeck

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Buffalo, NY 14209
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June 12, 2023

Honorable Jamar K. Walker
United States District Judge for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

I am a rising 3L from the University at Buffalo School of Law, and I am excited to apply for a post-graduate clerkship in your chambers. I will make an immediate contribution to your chambers because I have experience with issues that come before federal courts. I worked on criminal, appellate, civil asset forfeiture, civil rights, and employment discrimination cases as a law clerk with the U.S. Attorney's Office for the Western District of New York. While externing with the JustCause Federal Pro Se Assistance Program, I helped plaintiffs comply with the Federal Rules of Civil Procedure. I have been working on a complex class action litigation matter during my first few weeks as a summer associate at Hodgson Russ, LLP. Additionally, I wrote a seminar paper on a possible right to education in the Ninth Amendment, and I wrote about student athlete First Amendment rights for my law review publication competition.

I will make a positive impact in your chambers because of my teamwork abilities. During college, I was selected from a nationwide pool of applicants to participate in the Horizons Huntsman Leadership Summit. There, I learned how to use my strengths to maximize the success of the groups that I work with. I implemented these teamwork abilities on the executive board of my fraternity, where I worked with four others to oversee a group of 95-100 active members. As a team, we navigated the beginning of the COVID-19 pandemic. Further, I used my teamwork abilities as an assistant captain of the Bucknell Club Hockey Team, where I ensured that my teammates were calm and confident in stressful situations. My teamwork abilities will allow me to collaborate with chambers staff to produce quality work, even under stressful conditions.

I plan to use what I learn in a clerkship to advocate for free speech and free expression rights. Through a clerkship, I would like to continue to grow as a writer and develop a network of talented mentors who I can learn from throughout my practice of law. It would be an honor to have the opportunity to learn from you as I begin my legal career. Thank you for your time and consideration.

Very Respectfully,

Jack Weisbeck
Enc.

References

Professor Matthew Steilen – Constitutional Law and Federal Courts Professor
724 O'Brian Hall, North Campus
Buffalo, NY 14260
716-645-8966
mjsteile@buffalo.edu

Associate Professor Amy Semet – Civil Procedure Professor
522 O'Brian Hall, North Campus
Buffalo, NY 14260
716-645-8162
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Lecturer in Law Angelyn McDuff – Legal Analysis, Writing, and Research Professor
722 O'Brian Hall, North Campus
Buffalo, NY 14260
716-645-8182
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Assistant United States Attorney Grace Carducci
100 State Street
Rochester, NY 14614
585-263-6760
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Assistant United States Attorney Kyle Rossi
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Jack Weisbeck

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Education

UNIVERSITY AT BUFFALO SCHOOL OF LAW

Juris Doctor expected 2024

GPA: 3.9, Top 5%

Articles Editor on the *Buffalo Law Review*

Competed with the UB Jessup Moot Court Team at the New York Regional

- Awards: 16th Best Oralist (out of 62); 6th Best Written Team Submission (out of 17)
- Vice President of the UB Jessup Moot Court Board

CALI Award recipient: earned the highest grade in Constitutional Law II

Torts Teaching Assistant Fall 2023

BUCKNELL UNIVERSITY

Bachelor of Arts, *cum laude*, December 2020

Major: Economics | GPA: 3.5

Sigma Chi Horizon's Leadership Summit: selected to spend a week learning and practicing different leadership styles.

Sigma Chi Fraternity Executive Board Member

Political Economy Teaching Assistant Fall 2019

Legal Experience

SUMMER ASSOCIATE | HODGSON RUSS LLP | SUMMER 2023

- Working on a wide variety of legal matters at an AmLaw 200 Firm in Buffalo, NY.

RESEARCH ASSISTANT | PROFESSOR CHRISTINE P. BARTHOLOMEW | SUMMER 2023

- Performing advanced research on civil procedure and antitrust law.
- Making grammatical and stylistic edits to academic articles in preparation for their submission.

EXTERN | JUSTCAUSE | SPRING SEMESTER 2023

- Assisted plaintiffs in the Federal Pro Se Assistance Program in Rochester, NY.
- Gained valuable experience with federal court procedures and client communications.
- Assisted prospective clients on the Tenant Defense Project Hotline.

LAW CLERK | U.S. ATTORNEY'S OFFICE FOR THE WESTERN DISTRICT OF N.Y. | SUMMER 2022

- Performed legal writing and research tasks for Assistant U.S. Attorneys in preparation for trials, motions, and appeals.
- Drafted a portion of a motion for summary judgment in a § 1983 action, which was submitted under my name.
- Drafted a motion in opposition to a sentencing appeal to be argued before the Second Circuit.
- Participated in a summer law clerk moot court where I argued on behalf of the government at a fictional detention hearing.

OFFICE ASSISTANT | LEGAL AID SOCIETY OF ROCHESTER | JULY 2016 – JANUARY 2022

- Assisted in implementation of an online document storage system.
- Gathered evidence and made home visits to assist attorneys in the Attorney for the Child Unit.

INTERN | MONROE COUNTY DISTRICT ATTORNEY'S OFFICE | SUMMER 2018

- Assisted attorneys by preparing discovery, monitoring police footage, and transcribing interviews for case preparation.

Interests

HORTICULTURE: GALLEA'S GREENHOUSE AND FLORIST | APRIL 2016 – PRESENT

- Assisting customers with landscaping needs.

ICE HOCKEY: TREASURER + ASSISTANT CAPTAIN | BUCKNELL CLUB HOCKEY | 2017 - 2021

- Assisted with organization of donations for annual Breast Cancer Awareness Game.

FISHING + BOATING: SOUTH BAY BOAT AND TACKLE | SUMMER 2019

- Gave safety, navigational, and operational presentations to boat renters.

Law School UNOFFICIAL Transcript

Name: Weisbeck, Jack William
Student ID: 5022-8921

Date Issued: 06/08/2023

Beginning of LAW SCHOOL Record

Fall 2021

Program: Law JD
 Plan: Law

Course	Description	Attempted	Earned	Grade	Points
LAW 500TUT	Legal Profession	0.000	0.000		0.000
LAW 503LEC	Contracts	4.000	4.000	A-	14.680
LAW 505LEC	Criminal Law	4.000	4.000	A	16.000
LAW 509LEC	Torts	4.000	4.000	A-	14.680
LAW 515LEC	Legal Analys, Writing & Res I	4.000	4.000	A	16.000

			Attempted	Earned	GPA Units	Points
Term GPA	3.835	Term Totals	16.000	16.000	16.000	61.360
Cum GPA	3.835	Cum Totals	16.000	16.000	16.000	61.360

Spr 2022

Program: Law JD
 Plan: Law

Course	Description	Attempted	Earned	Grade	Points
LAW 500TUT	Legal Profession	1.000	1.000	S	0.000
LAW 501LEC	Civil Procedure	4.000	4.000	A	16.000
LAW 507LEC	Property	4.000	4.000	A	16.000
LAW 511LEC	Constitutional Law 1	4.000	4.000	A	16.000
LAW 516LEC	Legal Analys, Writing & Res II	3.000	3.000	A	12.000

			Attempted	Earned	GPA Units	Points
Term GPA	4.000	Term Totals	16.000	16.000	15.000	60.000
Cum GPA	3.915	Cum Totals	32.000	32.000	31.000	121.360

Fall 2022

Program: Law JD
 Plan: Law

Course	Description	Attempted	Earned	Grade	Points
LAW 564LEC	Legal Ethics and Pro Respon	3.000	3.000	A	12.000

Course	Description	Attempted	Earned	Grade	Points
LAW 612LEC	Constitutional Law 2	3.000	3.000	A	12.000
LAW 632SEM	Academic Legal Writing I	1.000	1.000	S	0.000
LAW 639SEM	9th Amendment	3.000	3.000	A	12.000
LAW 654LEC	Business Associations	3.000	3.000	A	12.000
LAW 841LEC	Int'l Legal Advocacy	3.000	3.000	A	12.000

			Attempted	Earned	GPA Units	Points
Term GPA	4.000	Term Totals	16.000	16.000	15.000	60.000
Cum GPA	3.943	Cum Totals	48.000	48.000	46.000	181.360

Spr 2023

Program: Law JD
 Plan: Law

Course	Description	Attempted	Earned	Grade	Points
LAW 529LEC	Contemplative Practice	3.000	3.000	S	0.000
LAW 600LEC	Federal Courts	3.000	3.000	A-	11.001
LAW 613LEC	Evidence	4.000	4.000	A-	14.668
LAW 633SEM	Academic Legal Writing II	2.000	2.000	S	0.000
LAW 791TUT	Externship	3.000	3.000	S	0.000
LAW 794TUT	Externship Seminar	1.000	1.000	A	4.000

			Attempted	Earned	GPA Units	Points
Term GPA	3.709	Term Totals	16.000	16.000	8.000	29.669
Cum GPA	3.908	Cum Totals	64.000	64.000	54.000	211.029

Fall 2023

Program: Law JD
 Plan: Law

Course	Description	Attempted	Earned	Grade	Points
LAW 517LEC	Advanced LAWR	3.000	0.000		0.000
LAW 604LEC	Sports Law	3.000	0.000		0.000
LAW 610LEC	Criminal Pro: Investigation	3.000	0.000		0.000
LAW 810TUT	Faculty Assistantship	3.000	0.000		0.000

			Attempted	Earned	GPA Units	Points
Term GPA	0.000	Term Totals	12.000	0.000	0.000	0.000
Cum GPA	3.908	Cum Totals	76.000	64.000	54.000	211.029

Law School UNOFFICIAL Transcript

Name: Weisbeck, Jack William
Student ID: 5022-8921

Law School Career Totals

			<u>Attempted</u>	<u>Earned</u>	<u>GPA Units</u>	<u>Points</u>
Cum GPA:	3.908	Cum Totals	76.000	64.000	54.000	211.029

End of Law School Record

June 13, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Jack Weisbeck has asked me to recommend him for a clerkship in your chambers. Jack is an extraordinary candidate. His cumulative GPA of 3.92 possibly makes him the top student in his class. (We don't publish a rank, but the registrar does tell students if they are in the top 5%; faculty see the GPAs of the top graduating students, and I can report that in some years there isn't a single student with a GPA that high.) Among faculty here Jack is known for 'blowing the top off' the class curve, racking up far more points than any other student.

The writing sample shows why. Jack writes with clarity about complex issues. His memo on Name-Image-Likeness rules for student athletes gives the clearest framing of the doctrinal muddle on commercial speech that I have seen in some time. I think it's likely we will soon see a judicial opinion, along these lines, that forces universities to reconceive their "vice" industry restrictions on the student sale of name, image, and likeness. Jack points out how those restrictions are out-of-step with the handling of "vice" speech in commercial speech doctrine itself. The comparison to the Tinker standard for school speech is also persuasive, as it is very difficult to imagine sustaining a university policy that, for example, forbade student speech about gambling. The memo gives the impression of the issue being simple, but in fact it's complex and this is a mark of effective legal writing.

Jack's been a leader in the law school as well. He is articles editor on the law review. In the Jessup Moot Court (the world's largest) his team made it to a quarterfinal bracket with Columbia, Harvard, and Yale, and Jack was judged the 16th best oralist in the entire competition. I'm not surprised by any of this. In my classes Jack was always engaged and thoughtful. He has a lovely demeanor and is well-liked by his classmates.

Jack Weisbeck is distinguished among his classmates here at UB and is an excellent candidate for federal clerkship. I hope you will give him a close look.

Sincerely,

Matthew Steilen
Professor of Law
University at Buffalo School of Law
State University of New York

Matthew Steilen - mjsteile@buffalo.edu - (716) 645-7918



June 6, 2023

Re: Clerkship Recommendation for Jack Weisbeck

Dear Judge:

I am writing to strongly support Jack Weisbeck's application for a federal clerkship with your chambers. I am currently an Associate Professor of Law and affiliated professor in the political science department at the University of Buffalo School of Law, State University of New York. I teach property, civil procedure, patent law, and intellectual property law. I clerked for Judge Paul Michel at the United States Court of Appeals for the Federal Circuit and am thrilled that Jack decided to apply for clerkships.

I was Jack's professor for civil procedure law while he was a student at the University of Buffalo School of Law, State University of New York during Spring 2022. Jack is an excellent student who would truly be a great clerk. He is one of our school's top students (top 5%) and is on scholarship at UB. Jack received the highest grade in the class (A) in civil procedure law, doing well in the midterms, final exam and other assessments. He consistently got the highest grade on every assessment, and his overall grade (95) was the highest in the class of over 80 students. Jack is also a very good writer. He was always prepared for class, and even read more than the assigned readings in the textbook. I forgot that I did not assign some of the notes to a case, and called on Jack that day; Jack was well versed in the material and answered all my questions, before another student chimed in noting that the material was not assigned. Jack's great performance in class led to him being asked to be a teaching assistant next year for a torts class. Teaching assistants receive academic credit, and are selected based both on their knowledge of their material and their ability to be a role model for 1Ls. I am sure Jack will do a great job in the role.

Jack is active in many student organizations which demonstrate his tremendous time management and teamwork skills. He was selected through a competitive exercise for the *Buffalo Law Review*, where he serves as the Articles Editor. In addition, while keeping up with law review and his grades, he somehow found the time to also participate and travel to the New York regional competition for the Jessup Moot Court Competition, where he received the award for 6th best written team brief (out of 17 teams), and 16th best oralist (out of 62 participants).

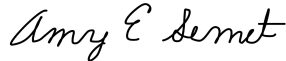
Further, many of Jack's prior positions equip him with skills that might be similar to that of a clerk. This summer, he is interning at Hodgson Russ LLP, the most prestigious law firm in Buffalo, and he is also serving as a research assistant for Professor Christine Bartholomew, an antitrust, class action, and civil procedure scholar here at UB. Jack interned with the United States Attorney's Office for the Western District of New York in Summer 2022, and thus gained the experience of what it is like working for the federal government in a diverse array of subject matters. His experience there gave him the opportunity to put his civil procedure knowledge to work drafting motions and appellate briefs.

Amy Semet
Associate Professor of Law
Affiliated Professor in Political Science
University of Buffalo School of Law
State University of New York
John Lord O'Brien Hall, Buffalo, NY 14260-1100
215-767-0041
amysemet@buffalo.edu
<http://www.amysemet.com>

Even before entering law school, Jack worked on legal matters. From 2016 to the middle of his 1L year, he worked as an office assistant at the Legal Aid Society of Rochester, where he received exposure to a wide variety of cases in service to our community. During one of the summers while he was a student at Bucknell University, Jack interned at the Monroe County District Attorney's Office, where he gained experience seeing how criminal cases operate. In all, given that he is still in law school, Jack has substantial experience in both civil and criminal cases, and is well equipped with knowing the nuances of civil procedure so as to be an asset to your chambers.

A federal clerkship would give Jack the chance to work closely with a judge to hone his legal skills, and to intimately know the nuances of the law that one can best pick up as a clerk. As one of UB's top students, Jack is eminently academically qualified. In addition, and perhaps most importantly, he would make a great colleague and team player, and be a tremendous asset to your chambers given his diligence and attention to detail as well as command of legal rules. Please feel free to contact me at amysemet@buffalo.edu or call me at 215-767-0041 if you have any questions about Jack.

Sincerely,



Amy Semet
Associate Professor of Law
University of Buffalo School of Law
State University of New York

June 14, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I had the pleasure of teaching Jack Weisbeck during his entire first year at the University at Buffalo School of Law, and it is with great enthusiasm that I write to recommend him for your law clerk position. Mr. Weisbeck was a student in my Legal Analysis, Writing, and Research (LAWR) course. During that course, he demonstrated diligence, an ability to incorporate feedback, and strong research and writing skills that will make him an exceptional law clerk.

Mr. Weisbeck outshines his peers in the diligence with which he approaches the development of his legal writing skills. However, Mr. Weisbeck did not focus specifically on one skill as many students do. Instead, he took advantage of extra opportunities to practice citation, grammar, legal research, and numerous other skills. Then, over the course of his first year, he incorporated the feedback he had received in each of these areas to create a truly impressive final brief for LAWR. After receiving feedback on his final brief, Mr. Weisbeck scheduled a meeting with me to review that feedback, demonstrating a continued commitment to improving his legal writing skills even after the school year had ended. Mr. Weisbeck's persistence in continuing to improve his legal writing skills, and his ability to implement feedback will make him an industrious law clerk.

During his first year, Mr. Weisbeck grew into a strong legal researcher with exceptional analytical abilities. The assignments Mr. Weisbeck completed for me during LAWR included topics in criminal law, copyright law, and tort law. Mr. Weisbeck's research consistently uncovered sources that allowed him to fully explore the bounds of the complex legal issues he was tasked with researching. Mr. Weisbeck's ability to analyze and research complex issues across legal disciplines makes him particularly well-suited to engage in the legal discourse of a skillful law clerk.

Mr. Weisbeck's professional demeanor also sets him apart from his peers. Every interaction I have had with Mr. Weisbeck throughout his law school career has been professional and respectful. During the many group exercises I had students complete, Mr. Weisbeck's groupmates sung his praises as a team player who was always well-prepared and easy to work with. These skills will make him a cooperative and professional addition to your staff.

Mr. Weisbeck has all the necessary skills to be an exceptional law clerk. Accordingly, it is without reservation that I recommend Jack Weisbeck for your law clerk position. I would be happy to discuss his qualifications further and can be reached at angelynd@buffalo.edu and 716-645-8182.

Sincerely,

Angelyn McDuff
Lecturer in Law, Legal Analysis, Writing and Research
Director of the LAWR Program

Angelyn McDuff - angelynd@buffalo.edu

Jack Weisbeck

916 Delaware Avenue – Apt. 5C

Buffalo, NY 14209

(585) 489-2982

jackweis@buffalo.edu

Writing Sample

The attached writing sample is a section of my Note and Comment Article drafted for the *Buffalo Law Review* publication competition. The remainder of my Article has been omitted for brevity. My thesis was that name, image, and likeness (NIL) laws for student athletes largely violate the First Amendment and could lead to a chilling of political speech on campus. The NCAA has long required that participating athletes maintain amateurism status, which limited their financial potential. A recent Supreme Court decision, *NCAA v. Alston*, prevented the NCAA from enforcing portions of its amateurism policy on antitrust grounds. Student athletes now have greater rights to their own publicity, allowing them to receive money in exchange for the use of their NIL. At this point, there is no federal NIL regulation, and the NCAA has ceded the ability to regulate NIL to states and individual colleges. Generally, most state and college level policies include bans on student athletes using their NIL to endorse traditional vice industries and any product or service that a college deems to go against its values. I argue that these policies are not only violative of the First Amendment, but they chill political speech of student athletes. They also could provide harmful legal and social precedents for future restrictions on free speech. While my Article was not chosen for publication, it was one of the ten finalists from my associate class. As per the rules of the Buffalo Law Review Note and Comment Competition, I received no outside assistance with my writing. The remainder of my Article can happily be submitted upon request.

2. Government Imposed NIL Policies that Prohibit Defined Categories of Speech are Unconstitutional.

Vice industry restrictions violate the First Amendment because they are content based restrictions on speech that do not meet strict scrutiny. Additionally, these restrictions cannot be justified under the commercial speech doctrine.

a. Content Based or Content Neutral

The First Amendment prevents the government from restricting speech based on its content.¹ Content based restrictions receive the highest scrutiny.² A restriction on speech is content based when the restriction draws distinctions based on the subject matter, or message, that a speaker chooses to convey.³ This heightened scrutiny applies even when the content that the government seeks to restrict is distasteful.⁴

In contrast, a content neutral restriction on speech is subject to a lower level of scrutiny.⁵ Content neutral restrictions can be justified as time, place, and manner restrictions.⁶ When the

¹ U.S. CONST. amend. I (“Congress shall make no law . . . abridging the freedom of speech”); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992); *see also* *Cantwell v. Connecticut*, 310 U.S. 296, 307 (1940) (reasoning that the First Amendment prevents a state government from issuing a license to engage in First Amendment activities based on the state’s determination of what is a worthy cause); *Texas v. Johnson*, 491 U.S. 397, 404 (1989) (quoting *U.S. v. O’Brien* 391 U.S. 367, 376, 409 (1968)) (reasoning that the First Amendment freedom of speech covers any conduct that intends to express an idea through elements of communication).

² *See, e.g.,* *City of Austin v. Reagan Nat. Advert., LLC*, 142 S. Ct. 1464, 1471 (2022) (stating that content based restrictions receive strict scrutiny); *Reed v. Town of Gilbert*, 576 U.S. 155, 171 (2015) (stating that strict scrutiny requires that the government prove that the restriction furthers a compelling interest, and that the restriction is narrowly tailored to that interest).

³ *See, e.g., Reed*, 576 U.S. at 164 (reasoning that a town engaged in a content based restriction by treating temporary directional signs, political signs, and ideological signs differently because of the messages that were being conveyed).

⁴ *See, e.g., Matal v. Tam*, 137 U.S. 1744, 1763 (2017) (applying this rule to a provision in the Lanham Act, which prohibited the government from registering trademarks that it deems offensive); *Johnson*, 491 U.S. at 414 (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable”).

⁵ *See, e.g., Turner Broad. Sys., v. F.C.C.*, 520 U.S. 180, 189 (1997) (citing *United States v. O’Brien* 391 U.S. 367, 377 (1996)) (stating that content neutral restrictions are permitted under the First Amendment when it advances an important government interest, other than the suppression of speech, and it does not burden more speech than necessary to achieve the important government interest);

⁶ *See* *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, 47–49 (1986) (reasoning that a city ordinance restricting the placement of adult entertainment theaters was an allowable time, place, and manner restriction because the ordinance is not primarily aimed at the content of the films, but rather at the secondary effects of such theaters in the community, and there were reasonable alternative locations for the theaters). *Playtime Theaters* is a

government restricts speech because of a disagreement with the message being conveyed, it is a content based restriction, not a content neutral restriction.⁷

Here, vice industry restrictions are content based because they treat vice industries differently than other subject matters.⁸ Accordingly, strict scrutiny will apply.⁹ Government entities imposing vice industry restrictions cannot meet strict scrutiny because they do not have a compelling interest to protect. They cannot claim to be protecting college students from vice industries because *in loco parentis* does not apply.¹⁰ Additionally, courts have not found a compelling state interest in protecting the government's reputation.

Even if the government had a compelling interest, the interest is not narrowly tailored because it is underinclusive.¹¹ If colleges did not want to encourage vice industries, they would restrict all students from promoting them, not just student athletes.¹² Additionally, if colleges wanted to avoid the embarrassment of a connection with vice industries, they would not seek

principal case for the Secondary Effects Doctrine. This limited doctrine gives the government some ways to restrict speech when it seeks to regulate the secondary effects of speech, not the speech itself. This doctrine is mostly used to prohibit sexual displays. *See id.*; *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 442–43 (2002) (restricting adult entertainment stores based on their harmful secondary effects); *City of Erie v. Pap's A.M.*, 529 U.S. 277, 298–302 (2000) (restricting nude dancing based on its harmful secondary effects). The secondary effects doctrine is limited because its reasoning is inconsistent with other First Amendment cases. For example, the government cannot restrict offensive speech because it wants to limit the secondary effects of hearing offensive terms. *See Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); *Turner Broad. Sys.*, 520 U.S. at 189. If the Secondary Effects Doctrine extends beyond sexual displays, it runs the risk of swallowing the First Amendment.⁷ *See, e.g., Ward*, 491 U.S. at 791 (1989) (“[t]he principal inquiry in determining content neutrality . . . is whether the government has adopted a regulation of speech because of disagreement with the message it conveys”); *Turner Broad. Sys.*, 512 U.S. at 642; *R.A.V.*, 505 U.S. at 386 (“The government may not regulate [speech or expression] based on hostility – or favoritism – towards the underlying message expressed”).

⁸ *See Reed v. Town of Gilbert*, 576 U.S. 155, 169 (2015). For example, under most vice industry restrictions, a student athlete is free to use their NIL to endorse a video game, but once the content of that video game includes a way for players to gamble real money, the endorsement becomes unlawful.

⁹ *Id.* at 171.

¹⁰ *See infra* Part III(B)(2).

¹¹ *See Reed*, 576 U.S. at 171–72 (reasoning that a content based ordinance restricting certain signs for safety concerns was underinclusive because signs are not more or less safe due to their content).

¹² *See id.*

their own partnerships with the same industries.¹³ Thus, vice industry restrictions are unconstitutional content based restrictions.

b. Commercial Speech

If the government restricts commercial speech based on its content, it is subject to a slightly more intermediate standard of review.¹⁴ Importantly, speech does not lose its First Amendment protections just because money was paid in exchange for that speech.¹⁵ Thus, paid advertisements receive First Amendment protections.¹⁶ Typically, the only allowable restrictions on commercial speech are bans on advertisements that a business knows to be misleading,¹⁷ or knows to be inciting illegal conduct.¹⁸

In *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, the Supreme Court articulated a test for restrictions on commercial speech.¹⁹ First, courts determine whether the speech is protected by the First Amendment.²⁰ Next, courts determine whether the asserted government interest is substantial.²¹ Finally, if necessary, courts determine whether the restriction directly advances the government interest, and whether it is over restrictive in advancing that interest.²²

¹³ See Laine Higgins, *The Bar Is Now Open at More College Football Stadiums*, THE WALL ST. J. (Sept. 16, 2021, 10:00 AM), <https://www.wsj.com/articles/college-football-beer-gambling-cannabis-sponsorships-11631759264>.

¹⁴ See *U.S. v. Edge Broad. Co.*, 509 U.S. 418, 426 (1993) (stating that commercial speech receives slightly less protection than other constitutionally protected speech); *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 762, 769–70 (1976) (extending First Amendment protections to commercial speech, and reasoning that consumers can remove misleading advertisements more effectively than the government).

¹⁵ See *Va. State Bd. of Pharmacy*, 425 U.S. at 761.

¹⁶ See *id.*

¹⁷ See *U.S. v. Philip Morris USA, Inc.*, 556 F.3d 1095, 1125–26 (D.C. Cir. 2009) (reasoning that a cigarette manufacturer misleads the public by labeling certain cigarettes “light cigarettes”).

¹⁸ *Pittsburgh Press Co. v. Pittsburgh Comm’n on Human Rels.*, 413 U.S. 376, 388 (1973) (reasoning that the government can ban advertisements that facilitate illegal employment discrimination).

¹⁹ *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557, 566 (1980).

²⁰ *Id.* (stating that commercial speech is protected by the First Amendment when it concerns lawful activity and is not misleading).

²¹ *Id.*

²² *Id.*

Central Hudson does not provide adequate justification for vice industry restrictions.

First, the First Amendment protects commercial speech.²³ Second, the government has no substantial interest in preventing this speech: student athletes are legal adults who are allowed to endorse a product that is legal for them to access in certain contexts.²⁴ Third, even if there was a substantial interest in preventing student athletes from endorsing vice industries, vice industry restrictions are over restrictive because they are not narrowly tailored.²⁵ Student athletes are still free to endorse other harmful products, such as fast food. Additionally, vice industry restrictions do not advance any government interest because they apply only to student athletes; others on campus are free to endorse vice industries. Thus, *Central Hudson* does not allow the imposition of vice industry restrictions.²⁶

In the past, courts understood that advertisements for vice industries were outside of the protections afforded to commercial speech.²⁷ However, this exception for restrictions on vice industries has been eliminated.²⁸ Currently, courts do not allow the government to prohibit advertisements for activities that are lawful in certain contexts.²⁹ Accordingly, the legality of

²³ See *id.*

²⁴ See generally *Lorillard Tobacco Co. v. Reilly*, 553 U.S. 525 (2001) (holding that the government interest in restricting vice industry advertisements becomes substantial if cigarettes are being marketed to children).

²⁵ See *Central Hudson*, 447 U.S. at 565.

²⁶ See *id.*

²⁷ See *Posadas de P.R. Assoc. v. Tourism Co. of P.R.*, 478 U.S. 328, 341–43 (1986) (using the *Central Hudson* test to hold that Puerto Rico could restrict advertisements for casino gambling because reducing demand for casino gambling to promote the health, safety, and welfare of its citizens was a substantial government interest); *U.S. v. Edge Broad. Co.*, 509 U.S. 418, 426 (1993) (using the *Central Hudson* test to uphold federal laws restricting advertisements for lotteries in non-lottery states because the underlying industry – gambling – was a vice industry).

²⁸ See 44 *Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 514 (1996) (stating that restrictions on advertisements for vice industries do not get a more lenient standard than the one in *Central Hudson*); *Greater New Orleans Broad. Ass’n, Inc. v. United States*, 527 U.S. 173, 195–96 (1999) (stating that restrictions on advertisements for gambling are subject to a standard *Central Hudson* analysis); *Lorillard Tobacco Co.*, 553 U.S. at 566 (stating that restrictions on advertisements for tobacco are subject to a standard *Central Hudson* analysis). But see *Coyote Pub., Inc. v. Miller*, 598 F.3d 592, 604–06 (9th Cir. 2010) (reasoning that advertisements for prostitution should be treated differently than advertisements for other vice industries because the “vice” at issue is not sex but the sale of sex, and because prostitution is prohibited by every state except Nevada).

²⁹ See 44 *Liquormart, Inc.*, 517 U.S. at 514 (stating that a vice label without a prohibition against the commercial behavior at issue does not provide a justification for the regulation of commercial speech surrounding that behavior). The Court is concerned that the vice exception could swallow the First Amendment because allowing any activity

vice industries, such as alcohol, tobacco, marijuana, and gambling, in certain contexts, excludes them from any vice industry exception that might remain in the commercial speech doctrine.³⁰

It may be argued that vice industry restrictions should not be assessed as restrictions on commercial speech, but rather as a college protecting its students from vice industries. However, this reasoning is incorrect. Schools may only restrict off-campus speech if the speech has a strong nexus to the school's duty to protect the student body.³¹ Restrictions on off-campus speech – such as NIL policies – still must comply with *Tinker*.³² In *Morse v. Frederick*, the Supreme Court held that *Tinker* allowed a school to restrict off-campus speech that promoted drug use.³³ While K-12 schools have a compelling interest in preventing student speech that glamorizes drug use at an off-campus event, colleges and universities do not.³⁴ The Court in *Morse* is influenced by *in loco parentis*,³⁵ a common law doctrine where parents delegate some

that could threaten public health or morals to be labeled as a vice activity could be a pretext for censorship. Further, the Court reasons that products such as alcoholic beverages, lottery tickets, and playing cards do not fall under the vice exception because they can be lawfully purchased on the open market. *See id.*

³⁰ *See id.*

³¹ *Kowalski v. Berkeley Cnty. Schs.*, 652 F.3d 565, 577 (4th Cir. 2011) (reasoning that a student creating a webpage to make fun of another student had a sufficient nexus with the school); *Battacharya v. Murray*, 515 F. Supp. 3d 436, 454 (W.D. Va. 2021) (applying the *Kowalski* test to a public university).

³² *See Morse v. Frederick*, 551 U.S. 393 (2007); *Tinker v. Des. Moines Indep. Sch. Dist.*, 393 U.S. 503, 514 (stating that K-12 schools can restrict speech that causes a substantial disruption or materially interferes with school activities); *Healy v. James*, 408 U.S. 169, 189 (1972) (applying *Tinker* to public colleges). NIL endorsement deals are off-campus speech because they occur away from educational settings, during the student athlete's free time. *See B.L. v. Mahoney Area Sch. Dist.* 964 F.3d 170, 189 (3d Cir. 2020) (stating that off-campus speech is, "speech that is outside school-owned, -operated, or -supervised channels and that is not reasonably interpreted as bearing the school's imprimatur.").

³³ *Morse*, 551 U.S. at 408 (reasoning that *Tinker* allowed a student suspension because of the risks of high school students engaging in drug use; the emphasis that Congress had placed on drug-prevention programs in the K-12 setting; and the emphasis placed by thousands of school boards on educational programs to prevent drug use).

³⁴ *See Dixon v. Ala. State Bd. of Ed.*, 294 F.2d 150, 158 (5th Cir. 1961).

³⁵ *Id.* at 407–08.

parental authority to the school system.³⁶ *In loco parentis* no longer extends to institutions of higher education.³⁷

Additionally, the Court is generally skeptical of off-campus restrictions on speech.³⁸ While *Tinker* allows schools to restrict speech to prevent a substantial disruption,³⁹ the Court in *Mahoney* stated that this interest diminishes in off-campus speech.⁴⁰ A school's regulatory interests in restricting off-campus speech are implicated by bullying, threats, work on academic assignments, use of computers, participation in online activities, and breaches of security.⁴¹ None of these interests are present with NIL policies.⁴² Additionally, courts will be skeptical of off-campus speech restrictions because – when coupled with a similar on-campus restriction – they represent a 24/7 restriction on that speech, which leaves no reasonable alternatives.⁴³ A reasonable alternative is a key feature of a permissible restriction on speech.⁴⁴

Furthermore, a court would surely look to the fact that many schools are promoting vice industries for their own financial benefits while restricting their student athletes from doing the

³⁶ See 1 W. Blackstone, Commentaries on the Laws of England 441 (1765) (“[A parent] may also delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then *in loco parentis*”); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682 (1986) (stating that First Amendment rights of students in schools do not extend as far as First Amendment rights enjoyed by adults in other settings); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988) (stating that First Amendment rights of students must be “applied in light of the special characteristics of the school environment”) (citing *Tinker*, 393 U.S. at 506).

³⁷ See *Dixon*, 294 F.2d at 158 (reasoning that expulsion from a public university must be governed by the Constitution and not any other justification, such as *in loco parentis*); See generally Martha Craig Daughtrey, *Women and the Constitution: Where We Are at the End of the Century*, 75 N.Y.U. L. REV. 1, 15 (2000) (explaining a challenge to a university curfew for female students that was implemented in the name of student safety, an *in loco parentis* justification. Such curfews have been eliminated in today's universities).

³⁸ See *Mahoney Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038, 2045 (2021).

³⁹ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513 (1969).

⁴⁰ *Mahoney*, 141 S. Ct. at 2045. This is a recently decided case involving a high school student who successfully challenged her suspension on the grounds that the First Amendment allowed her to use profanity to criticize her school's cheerleading team on social media. While it has not been extended to higher education, the principles that *Mahoney* stands for are applicable to off-campus speech made by student athletes.

⁴¹ *Id.*

⁴² See *Tinker*, 393 U.S. at 513; *Mahoney*, 141 S. Ct. at 2045.

⁴³ *Mahoney*, 141 S. Ct. at 2046.

⁴⁴ See, e.g., *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, 53–54 (1986).

same.⁴⁵ Accordingly, a college or university cannot justify a vice industry restriction because of an asserted interest in protecting students from vice industries. The *in loco parentis* justification that influenced the Court in *Morse* is not present because vice industry restrictions target college athletes, not high school students.⁴⁶

3. Institutional Values NIL Restrictions Are Unconstitutionally Vague.

The First Amendment prevents restrictions on speech that are unconstitutionally vague.⁴⁷ This void for vagueness doctrine is based upon due process principles:⁴⁸ the law must be sufficiently clear so that people can knowingly comply with the law.⁴⁹ Clarity also prevents arbitrary enforcement.⁵⁰ If a reasonable person cannot understand what is prohibited under a law, the government can enforce it arbitrarily.⁵¹ The fear of arbitrary enforcement will chill speech,

⁴⁵ Higgins, *supra* note 13 (stating that universities are partnering with vice industries, such as alcohol, cannabis, and gambling, to recoup financial losses suffered during the pandemic); Nadir Pearson, *120 of the Best College Courses, Degrees, and Certifications for Cannabis*, LEAFLY (July 13, 2022), <https://www.leafly.com/news/industry/best-cannabis-college-degrees-and-certifications> (explaining which colleges offer the best education in cannabis sale and production); Press Release, Office of Gov. Hochul, Gov. Hochul Announces \$5 Million in Funding to Support the Launch of New and Existing Cannabis Accreditation Programs (July 18, 2022) (announcing a grant for State University of New York (SUNY) schools to create cannabis education programs). Note that despite SUNY's support for cannabis education, student athletes at UB, a SUNY school, are prohibited from endorsing cannabis products. See UNIVERSITY AT BUFFALO, NAME IMAGE AND LIKENESS PILLARS, https://ubbulls.com/documents/2021/6/30/UB_NIL_Pillars_2023.pdf.

⁴⁶ See *Morse v. Frederick*, 551 U.S. 393, 408 (2007).

⁴⁷ See generally *Coates v. Cincinnati*, 402 U.S. 611 (1971); *Schad v. Borough of Mount Ephraim*, 452 U.S. 61 (1981).

⁴⁸ See, e.g., *Coates*, 402 U.S. at 614–15; *United States v. Williams*, 553 U.S. 285, 304 (2008).

⁴⁹ See *Coates*, 402 U.S. at 614–15. But see *Broadrick v. Oklahoma*, 413 U.S. 601, 607–08 (1972) (reasoning that a state law that prohibited state employees from belonging to a political club, running for office, or managing a political party was not unconstitutionally vague because while there was some uncertainty, it was still clear what activity was prohibited); *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972) (holding that a noise ordinance, which prohibited “any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class” was not unconstitutionally vague because it was clear what the ordinance prohibited).

⁵⁰ See *id.* at 108; *Cohen v. California*, 403 U.S. 15, 19 (1971).

⁵¹ See *DA Mortg., Inc. v. City of Miami Beach*, 486 F.3d 1254, 1270–72 (11th Cir. 2007). See generally *Coates*, 402 U.S.; *Reed v. Town of Gilbert*, 576 U.S. 155 (2015).

and society will be made worse off by cheapening the marketplace of ideas.⁵² Furthermore, speech restrictions are unconstitutionally overbroad if they restrict protected speech.⁵³

A restriction is unconstitutionally vague if reasonable people are left to guess at what speech is prohibited.⁵⁴ In *Coates v. City of Cincinnati*, the Supreme Court held that an ordinance prohibiting people from annoying passersby on the sidewalk was unconstitutionally vague because reasonable people would be left to guess at what speech is annoying.⁵⁵ There is no way of knowing what a particular officer enforcing the ordinance will find annoying, allowing for arbitrary enforcement and a chilling of speech.⁵⁶ Additionally, the Court found the Cincinnati ordinance to be overbroad because it would authorize the punishment of constitutionally protected conduct.⁵⁷

Vague speech restrictions in campus speech codes were challenged in the 1990's and 2000's.⁵⁸ Speech codes were struck down when reasonable students were left to guess what speech was prohibited, and when the codes restricted more speech than was necessary to prevent

⁵² See *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 68 (1981) (holding that a ban on all live entertainment in a borough was overbroad because it would deter protected activities); *Reno v. ACLU*, 521 U.S. 844, 877 (1997) (reasoning that prohibitions on the distribution of material that is “patently offensive” or “indecent” were unconstitutionally vague because they would restrict nonpornographic materials that could have beneficial social value).

⁵³ See *Schad*, 452 U.S. at 68.

⁵⁴ *Coates*, 402 U.S. at 614.

⁵⁵ *Id.* at 611–14.

⁵⁶ See *id.* (reasoning that what will annoy some people will not annoy others).

⁵⁷ *Id.* (reasoning that an arresting officer enforcing this ordinance could prevent an otherwise lawfully conducted protest because he or she found it annoying).

⁵⁸ See generally Azhar Majeed, *Defying the Constitution: The Rise, Persistence, and Prevalence of Campus Speech Codes*, 7 GEO. J.L. & PUB. POL'Y 481, 488–94 (2009) (explaining how almost all speech codes have been struck down as unconstitutionally vague); James R. Bussian, *Anatomy of the Campus Speech Code: An Examination of Prevailing Regulations*, 36 S. TEX. L. REV. 153, 171–73 (1995) (surveying relevant litigation over speech codes); Thomas A. Schweitzer, *Hate Speech on Campus and the First Amendment: Can They Be Reconciled?*, 27 CONN. L. REV. 493 (1995) (discussing arguments for and against campus speech codes from professors and administrators); *What Are Speech Codes*, FOUND. FOR INDIVIDUAL RIGHTS AND EXPRESSION, <https://www.thefire.org/research-learn/what-are-speech-codes#:~:text=Reforming%20College%20Policies,Amendment%20in%20society%20at%20large> (stating that a speech code is any “university regulation or policy that prohibits expression that would be protected by the First Amendment in society at large”, and stating that speech codes typically banned broad topics such as “offensive content” and “disparaging remarks”).

a substantial disruption.⁵⁹ Alternatively, speech codes were upheld when they used established and defined legal terms to describe banned categories of speech.⁶⁰ Furthermore, speech codes were upheld when they provided an aspirational goal to discourage offensive speech without banning it.⁶¹

Many institutional values restrictions are unconstitutionally vague.⁶² For example, the proposed College Athlete Compensatory Rights Act prohibits student athletes from using their NIL to promote any “product or service that is reasonably considered to be inconsistent with the values of an institution.”⁶³ This language likely incorporates the stated institutional values of the student athlete’s college.⁶⁴ Some common institutional values such as discovery, diversity,

⁵⁹ *Doe v. Univ. of Mich.*, 721 F. Supp. 852, 867 (E.D. Mich. 1989) (holding that a ban on language the stigmatized an individual was unconstitutionally overbroad because there was no conceptual distinction between what stigmatized an individual and what did not); *Coll. Republicans at S.F. Univ. v. Reed*, 523 F. Supp. 2d 1005, 1024 (N.D. Cal. 2007) (reasoning that a ban on speech that is not “civil” is unconstitutionally vague because, without a definition of civil, a reasonable student would be left to guess what civil means).

⁶⁰ *Corlett v. Oakland Univ. Bd. of Tr.*, 958 F. Supp. 2d 795, 810 (E.D. Mich. 2013) (holding that a prohibition on speech that intimidated, harassed, or threatened was not unconstitutionally vague because these terms have established legal definitions that allowed students to conform their conduct to the policy); *Reed*, 523 F. Supp. 2d at 1021–22 (reasoning that while terms such as “intimidation” and “harassment” could include protected speech, they are not unconstitutionally vague because they appear in the context of preventing “[c]onduct that threatens or endangers the health or safety of any person”).

⁶¹ *Bair v. Shippensburg Univ.*, 280 F. Supp. 2d 357, 371 (M.D. Pa. 2003) (holding that the non-aspirational components of the speech code were unconstitutionally overbroad because they banned speech that was protected by the First Amendment). An aspirational speech code is a good way for a school to reflect its own institutional values without directly interfering with the First Amendment rights of its students. Unfortunately, NIL restrictions are not aspirational.

⁶² *Infra* Appendices I, II, and III.

⁶³ *Id.*; Collegiate Athlete Compensation Rights Act, S. 4855, 117th Cong. (2022).

⁶⁴ A brief survey of value statements of select universities shows the following: Penn State lists, and very briefly defines, institutional values of integrity, respect, responsibility, discovery, excellence, and community. *The University’s Mission*, PENN STATE OFFICE OF THE EXEC. VICE PRESIDENT AND PROVOST, <https://provost.psu.edu/mission-vision/>. Baylor University lists values such as, “Promot[ing] the health of mind, body, and spirit as these are understood in the Christian tradition and by the best of modern physical and psychological science”. *Core Convictions*, BAYLOR UNIV., <https://about.web.baylor.edu/values-vision/core-convictions>. University of Washington lists the following values without providing any definitions: integrity, diversity, excellence, collaboration, innovation, and respect. *Vision & Values*, UNIV. OF WASH., <https://www.washington.edu/about/visionvalues/>. Howard University lists the following values without providing any definitions: excellence, leadership, service, and truth. *Mission, Vision & Values*, HOWARD UNIV., <https://strategicplan.howard.edu/about/mission-vision-values#:~:text=Excellence%2C%20leadership%2C%20service%2C%20and,issues%20impacting%20the%20Africa%20Diaspora.>

excellence, collaboration, and service would render this statute unconstitutionally vague.⁶⁵ These terms are similar to other guidelines found to be unconstitutionally vague – such as “annoying” and “civil” – because a reasonable student athlete would be left to guess whether a product or service is inconsistent with these values.⁶⁶ Accordingly, protected speech – the ability to enter into NIL deals – would be chilled out of fear of losing athletic eligibility.⁶⁷ A briefly defined values statement does not give sufficient notice because it does not use terms with legally established definitions, or references to a narrowly defined policy goal.⁶⁸

One value stated by Baylor University is an example of a non-vague restriction: “Promot[ing] the health of mind, body, and spirit as these are understood in the Christian tradition and by the best of modern physical and psychological science”.⁶⁹ For example, if a student athlete at Baylor used their NIL to promote an online sports gambling service, there is sufficient context to know that this deal would be inconsistent with Baylor’s values.⁷⁰ The Christian tradition is opposed to gambling;⁷¹ there are harmful, addictive effects of gambling that

⁶⁵ See *Doe v. Univ. of Mich.*, 721 F. Supp. 852, 867 (E.D. Mich. 1989); *Coll. Republicans at S.F. Univ. v. Reed*, 523 F. Supp. 2d 1005, 1024 (N.D. Cal. 2007); *Coates v. Cincinnati*, 402 U.S. 611, 614–15 (1971).

⁶⁶ See *Reed*, 523 F. Supp. 2d at 1024; *Coates*, 402 U.S. at 614–15. A good example would be excellence, which is listed as a value by all four universities that I randomly selected for this exercise. Excellence means different things to different people. Consider this: a student athlete from an impoverished background enters into a lucrative NIL deal with a local financial institution that issues legal, but arguably predatory, payday loans. Reasonable observers could claim that this NIL deal supports excellence because a student athlete, who grew up poor, is now able to use their athletic ability to help their family and achieve upward social mobility. Other reasonable observers could say that the deal with the financial institution does not support excellence because it makes the community worse off by enabling predatory practices. Neither interpretation is necessarily correct; it depends on your definition of excellence. The student athlete would be left to guess at the meaning of excellence as applied to this potential NIL deal.

⁶⁷ See *Reed*, 523 F. Supp. 2d at 1024 (stating that vague speech restrictions chill protected speech).

⁶⁸ See *Corlett v. Oakland Univ. Bd. of Tr.*, 958 F. Supp. 2d 795, 810 (E.D. Mich. 2013); *Coll. Republicans at S.F. Univ. v. Reed*, 523 F. Supp. 2d 1005, 1021–22 (N.D. Cal. 2007).

⁶⁹ *Core Convictions*, *supra* note 64.

⁷⁰ See *Reed*, 523 F. Supp. 2d at 1021–22.

⁷¹ See 1 *Timothy* 6:9–10 (“Those who want to get rich fall into temptation and a trap and into many foolish and harmful desires that plunge people into ruin and destruction. For the love of money is a root of all kinds of evil. Some people, eager for money, have wandered from the faith and pierced themselves with many griefs.”).

have been recognized by modern psychological science.⁷² A Baylor student athlete would not be left to guess what action would be inconsistent with Baylor's values.⁷³ In order for the Collegiate Athlete and Compensatory Rights Act to survive a vagueness challenge, colleges would have to adopt more comprehensive values statements, such as Baylor's, allowing reasonable student athletes to understand how to comply.⁷⁴

Furthermore, New York's NIL policy is unconstitutionally vague. New York prevents student athletes from entering into an endorsement deal that "would reasonably be judged to cause financial loss or reputational damage to the college[.]"⁷⁵ A student athlete would be left to guess about potential financial loss because marketing is an inexact science.⁷⁶ Furthermore, it is difficult to reasonably judge what the reputational damage of an NIL deal would be without further guidance.⁷⁷

The University at Buffalo (UB) NIL policy is also unconstitutionally vague. UB prevents student athletes from using their NIL in any way that is "deemed otherwise damaging to the University's reputation, to be reviewed by university officials."⁷⁸ This policy has a similar

⁷² *Compulsive Gambling*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/compulsive-gambling/symptoms-causes/syc-20355178>.

⁷³ See *Coates*, 402 U.S. at 614–15.

⁷⁴ See *Corlett v. Oakland Univ. Bd. of Tr.*, 958 F. Supp. 2d 795, 810 (E.D. Mich. 2013); *Coll. Republicans at S.F. Univ. v. Reed*, 523 F. Supp. 2d 1005, 1021–22 (N.D. Cal. 2007).

⁷⁵ N.Y. EDUC. § 6438-a (McKinney 2023).

⁷⁶ See *Coates*, 402 U.S. at 614–15. Note that the reasonableness requirement means that an endorsement deal with a product or service that is facially offensive or ridiculous would not be covered. A reasonable student athlete would know what obviously causes financial harm. The difficulty comes with more realistic endorsement deals where a student athlete would not have the necessary information to comply with the requirement.

⁷⁷ See *id.* The reputation of a college could mean many different things. For example, an NIL deal with a company that markets drinking games could harm the college's academic reputation but enhance the college's social reputation. Conversely, an NIL deal with a company that manufactures graphing calculators could enhance the college's academic reputation while harming the college's social reputation. The student athlete would have to guess what reputational damage means to the state of New York, and subject themselves to arbitrary enforcement because the term "reputational damage" can have different meanings.

⁷⁸ UNIVERSITY AT BUFFALO, NAME IMAGE AND LIKENESS PILLARS, https://ubbulls.com/documents/2021/6/30/UB_NIL_Pillars_2023.pdf.

problem with “reputation”, a term with insufficient context to withstand a vagueness challenge.⁷⁹ Additionally, by imposing a preclearance requirement, a student athlete would be left to guess what an unnamed university official understands to be reputation damaging.⁸⁰ This is a prior restraint, which is presumptively unconstitutional due the substantial risk of chilling protected speech.⁸¹

To varying degrees, NIL institutional values restrictions are unconstitutionally vague because reasonable student athletes are left to guess at what speech is restricted. The confusion will chill student athletes from participating in protected speech. The impact of NIL policies on campus political speech could be drastic.

⁷⁹ See *Coll. Republicans at S.F. Univ. v. Reed*, 523 F. Supp. 2d 1005, 1024 (N.D. Cal. 2007); *Coates*, 402 U.S. at 614–15.

⁸⁰ See generally *Near v. Minnesota*, 283 U.S. 697 (1931); *N.Y. Times v. United States*, 403 U.S. 713 (1971); *Neb. Press Assoc. v. Stuart*, 427 U.S. 539 (1976).

⁸¹ See *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963) (“Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.”); *Stuart*, 427 U.S. at 559 (“[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.”); *Bowman v. White*, 444 F.3d 967, 980 (6th Cir. 2006) (stating that a university’s requirement that a non-university group obtain a permit from a university official before using an outdoor space is a prior restraint that bears a heavy presumption of unconstitutionality).

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June 19, 2023

The Honorable Jamar K. Walker
600 Granby Street
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Dear Judge Walker:

I am a rising third-year law student at Northeastern University School of Law, writing to express my strong interest in a clerkship in your chambers for the 2024-2025 term. I am particularly interested in clerking in your chambers because of your significant public interest background at the U.S. Attorney's Office. As an aspiring public interest litigator, clerking for you would allow me to deepen my legal research and writing skills as I prepare for a career in public service.

My experience as an intern with Magistrate Judge Jennifer Boal¹ at the U.S. District Court for the District of Massachusetts equipped me with the necessary skills to become an effective legal researcher and writer. As a judicial intern, I prepared bench memoranda for the judge on Section 1983 cases, breach of contract cases, and referrals to Bankruptcy Court. Specifically, I drafted a bench memorandum on the applicability of the Sherman Anti-Trust Act to a *pro se* employment claim, analyzing the First Circuit's recently developed test on the rule of reason. This summer, I am furthering my legal research and writing skills at the ACLU National office by conducting legal and policy research, and drafting memoranda for immigration impact litigation cases. As a clerk, I would look forward to deepening these skills in preparing bench memoranda for your chambers.

My experiences with Northeastern's Immigrant Justice Clinic and ProBAR taught me how to effectively advocate for my clients in litigation. As a student-attorney at the Clinic, I successfully co-represented a client from Belarus seeking political asylum. Specifically, I researched asylum case law, U.S. State Department reports, and local news sources from Belarus to draft a compelling legal brief for the client's asylum application. At ProBAR, I successfully petitioned for three children who were the victims of labor trafficking in their home countries and were granted relief by the U.S. Office of Trafficking in Persons. Representing clients successfully in the initial stages of their immigration cases has sparked my interest in understanding the various stages of litigation beyond the initial filing. As a clerk, I would look forward to working on assignments that cover different stages of litigation through reviewing initial filings, preparing for trial, and drafting opinions.

I plan to use my law degree to represent unaccompanied migrant children in court and eventually use impact litigation to advocate for better immigration laws and policies. Having worked in immigration for several years, I have realized that immigration law is an interdisciplinary field, often interacting with the criminal justice system, employment law, and other areas of the law. Clerking for you would provide me with the tools to become a more effective public interest litigator by exposing me to different areas of the law that impact immigration cases and by working with a judge who is committed to a career in public service.

Enclosed please find my resume, writing sample, transcript, and letters of recommendation from Professor Carol Mallory, Teaching Professor at Northeastern University School of Law, Professor Hemanth Gundavaram, Director of the Immigrant Justice Clinic at Northeastern Law, and Professor Lucy Williams, Professor of Law at Northeastern Law. Thank you for your time and consideration. I look forward to hearing from you regarding my candidacy.

Sincerely,

Charlotte Weiss

¹ In addition to my letters of recommendation, Judge Boal is happy to provide an oral reference. She can be reached via email at Jennifer_Boal@mad.uscourts.gov or through the chambers' main line at 617-748-9236.

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LEGAL EXPERIENCE

American Civil Liberties Union (ACLU) National Office, San Francisco, CA

Legal Intern with Immigrants' Rights Project

May 2023-Present

Draft memoranda for immigration impact litigation cases, research discrete legal issues, participate in strategy meetings about current litigation.

U.S. District Court for the District of Massachusetts, Boston, MA

Judicial Intern to the Honorable Jennifer Boal

Sept. 2022-Dec. 2022

Drafted bench memoranda on Sherman Act anti-trust cases, breach of contract cases, and referrals to bankruptcy court. Researched discrete legal issues and observed court proceedings.

Immigrant Justice Clinic, Northeastern University School of Law, Boston, MA

Student Attorney

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Co-represented client from Belarus seeking asylum based on political activism against Lukashenko regime. Filed I-589 asylum application and drafted client affidavit, country conditions report, and legal brief in preparation for client's upcoming court hearing.

South Texas Pro Bono Asylum Representation Project (ProBAR), Harlingen, Texas

Senior Unaccompanied Child Legal Services Specialist

Dec. 2018-Nov. 2019, Apr. 2020-Jul. 2021

Trained new Unaccompanied Child Legal Services Specialists to conduct legal interviews and Know Your Rights presentations as part of a project of the American Bar Association. Developed manuals on how to support queer and gender nonconforming unaccompanied migrant children.

Unaccompanied Child Legal Services Specialist

Oct. 2017-Dec. 2018

Conducted legal interviews in Spanish with detained immigrant children to create compelling narrative of child's life on behalf of ProBAR attorneys. Taught comprehensive Know Your Rights Presentations in Spanish to detained children about removal proceedings, immigration court, and their rights while in the United States.

ADDITIONAL PROFESSIONAL EXPERIENCE

Rafael Hernández K-8, Roxbury, MA

Aug. 2016-Jun. 2017

Student-Teacher

Co-taught 3rd Grade Spanish-speaking classroom in bilingual public school, focusing on math and science lessons.

City Year, Los Angeles, CA

Aug. 2011-Jun. 2012

Corps Member, Figueroa Street Elementary School

Power Award Recipient: Nominated by peers as one of 3 awardees who best represented values of City Year. Developed literacy and math lesson plans for ten 4th Grade English Language Learner students.

LANGUAGE SKILLS

Spanish: Native Fluency

NORTHEASTERN UNIVERSITY



Northeastern University Registrar

Office of the University Registrar

230-271

360 Huntington Avenue

Boston, MA 02115-5000

email: transcripts@northeastern.edu

web: <http://www.northeastern.edu/registrar/>

Record of: Charlotte J Weiss

NUID: 002124595

Issued To: CHARLOTTE WEISS

WEISS.CH@NORTHEASTERN.EDU

REFNUM:07011628

Primary Program

Juris Doctor

College : School of Law

Major : Law

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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INSTITUTION CREDIT:

Fall 2021 Law Semester (08/30/2021 - 12/22/2021)

LAW 6100	Civil Procedure	5.00 H	0.000
LAW 6105	Property	4.00 H	0.000

LAW 6106	Torts	4.00 H	0.000
LAW 6160	Legal Skills in Social Context	2.00 HH	0.000
LAW 6165	LSSC: Research & Writing	2.00 H	0.000

Ehrs:17.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000

Spring 2022 Law Semester (01/10/2022 - 05/06/2022)

LAW 6101	Constitutional Law	4.00 H	0.000
LAW 6102	Contracts	5.00 H	0.000
LAW 6103	Criminal Justice	4.00 H	0.000
LAW 6160	Legal Skills in Social Context	2.00 HH	0.000
LAW 6165	LSSC: Research & Writing	2.00 H	0.000

Ehrs:17.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000

Summer 2022 Law Semester (05/09/2022 - 08/23/2022)

LAW 7336	Immigration Law	3.00 HH	0.000
LAW 7443	Professional Responsibility	3.00 H	0.000
LAW 7657	Immigrant Justice Clinic	8.00 HH	0.000
LAW 7690	Intro Writing for Litigation	1.00 H	0.000
LAW 7938	Research Assistant	2.00 HH	0.000

Ehrs:17.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000

Fall 2022 Law Semester (08/29/2022 - 12/23/2022)

COOP: U.S. Dist. Court, Dist. of Mass., Judge Boal
Boston, MA

***** CONTINUED ON NEXT COLUMN *****

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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Institution Information continued:

LAW 7940	Reflections on Lawyering	1.00 H	0.000
LAW 7941	Pub Int Pub Serv Field Placemt	7.00 CR	0.000
LAW 7964	Co-op Work Experience	0.00 CR	0.000

Ehrs: 8.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000

Spring 2023 Law Semester (01/09/2023 - 04/29/2023)

LAW 7358	Social Welfare Law	3.00 HH	0.000
LAW 7398	Federal Crts & the Fed System	4.00 HH	0.000
LAW 7608	American Legal Thought	3.00 HH	0.000
LAW 7928	LSSC Lawyering Fellow Seminar	1.00 HH	0.000
LAW 7931	LSSC Lawyering Fellow	3.00 HH	0.000

Ehrs:14.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000

Summer 2023 Law Semester (05/08/2023 - 08/26/2023)

COOP: ACLU, Immigrants' Rights Proj.

San Francisco, CA

IN PROGRESS WORK

LAW 7966	Public Interest Co-op Work Exp	0.00 IN PROGRESS	
In Progress Credits		0.00	

***** TRANSCRIPT TOTALS *****

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	73.000	0.000	0.000	0.000

TOTAL TRANSFER	0.000	0.000	0.000	0.000
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OVERALL	73.000	0.000	0.000	0.000
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***** END OF TRANSCRIPT *****

Page: 1

Rebecca Hunter

Assoc VP & University Registrar



Northeastern University School of Law Grading and Evaluation System

A global leader in experiential learning for over 50 years, Northeastern University School of Law (“NUSL”) integrates academics with practical skills as its core educational philosophy. To fulfill NUSL graduation requirements, law students must earn at least 83 academic credits and complete at least three terms of full-time, law-related work through “co-op,” our unique Cooperative Legal Education Program.

Consonant with the word “cooperative,” NUSL cultivates an atmosphere of cooperation and mutual respect, exemplified in our course evaluation system. NUSL faculty provide detailed feedback to students through narrative evaluations, designed to prepare law students for the practice of law. The narrative evaluations examine law student written work product, contributions to class discussions, results of examinations, specific strengths and weaknesses, and overall engagement in the course. Faculty also award the student a grade in each course, using the following categories:

- **High Honors**
- **Honors**
- **Pass**
- **Fail**

A small number of courses are evaluated using a Credit/No Credit evaluation system, instead of a grade. NUSL does not provide GPAs or class ranks.

NUSL transcripts include the following information:

- The course name, grade received, and number credits earned;
- The faculty’s narrative evaluation for the course; and
- All co-ops completed, and the evaluations provided by the co-op employer.

“In progress” notations on a transcript indicate that a student has not yet received an evaluation from faculty for a particular course.

During the Spring 2020 semester, due to the COVID-19 pandemic, all courses were subject to mandatory “Credit” or “Fail” evaluations, except for year-long courses LAW 6160 and 6165.

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Charlotte Weiss
Exam #: 25279
Course Title: Federal Crts & the Fed System
Course ID: LAW 7398
Credits: 4
Term: Spring 2023 Law Semester
Instructor : Burnham, Margaret A.
Grade: High Honors

Course Description:

The subject of this course is the distribution of power between the states and the federal government, and between the federal courts and other branches of the federal government as manifested in jurisdictional rules of the federal courts. The topics covered include the nature of the federal judicial function, the review of state court decisions by the United States Supreme Court, and the jurisdiction of federal district courts, with special emphasis on actions claiming constitutional protection against state official actions.

Performance Highlights:

You performed at the highest level in this course. You participated in each and every class, and you were present and fully prepared for every class. Moreover, you followed up with clarifying questions after each class, giving me the opportunity to revisit areas that required clarification. In these respects you were entirely unique in a quite large class. Thank you for your perseverance and commitment to mastering this material, and to your insistence on nailing down the details.

Your final exam made clear what your classroom performance presaged: you wrote an excellent exam, nimbly canvassing a wide area of law, displaying discerning and thorough knowledge of the doctrine and background history, and separating the irrelevant from the important. You write cogently and persuasively. Well done!

Date: 5.30.2023 6:59PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Charlotte Weiss
Exam #: 25279
Course Title: Social Welfare Law
Course ID: LAW 7358
Credits: 3
Term: Spring 2023 Law Semester
Instructor : Williams, Lucy A.
Grade: High Honors

Course Description:

This course examines American public assistance as a legal institution. After reviewing the historical, sociological and juridical roots of the welfare system, students examine the laws governing major assistance programs, especially eligibility requirements, rules governing grant determination, work and family rules, and procedural rights. Primary emphasis is on statutory and regulatory construction. The course explores methods by which lawyers can deal with the system: advocacy in the administrative process, litigation, legislative reform and representation of recipient organizations.

Performance Highlights:

- You successfully grappled with the difficult concepts of entitlement, the privileging of waged work, and conditioning benefits on citizenship.
 - You applied central theoretical concepts and incorporated secondary sources to deepen your analysis.
 - You carefully parsed regulatory and statutory language in the context of social welfare law, programs, and policy.
 - Your paper was very well written.
 - This was an outstanding exam.
-

Date: 5.26.2023 1:22PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Charlotte Weiss
Exam #:	25279
Course Title:	American Legal Thought
Course ID:	LAW 7608
Credits:	3
Term:	Spring 2023 Law Semester
Instructor :	Klare, Karl E.
Grade:	High Honors

Course Description:

This course contrasts critical-theoretic approaches to law (e.g., legal realism, critical legal studies, identity-based jurisprudence, socio-legal studies, transformative jurisprudence) with mainstream legal thinking. In part the course is an intellectual history of American law, and in part it addresses contemporary jurisprudence and legal theory. Drawing on students' personal experience, the course also examines American legal education and the professional socialization of law students. A "big" question underlying the course is whether legal work is a medium in which one can pursue projects oriented toward political and social change. There is no prerequisite for this course, and no prior background in legal theory, history, or jurisprudence is needed. All students are expected to read the assigned texts very closely and participate in discussing them in class.

Performance Highlights:

- You demonstrated an excellent and very thoughtful command of historical sources on the evolution of US legal thought.
- You demonstrated an excellent and discerning appreciation of salient themes and debates among US jurists over the past 150 years, particularly in connection with issues of economic organization and justice.
- You offered particularly illuminating observations on US jurists' contrasting ideas regarding state responsibility for economic inequality. You persuasively demonstrated the interesting point that legal thinkers who disagree sharply on social and political questions may share conceptual foundations.
- You participated in searching, in-class group discussion and analysis of the historical materials.

Date:	5.25.2023 3:17PM
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Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Charlotte Weiss
Exam #:	25279
Course Title:	LSSC Lawyering Fellow Seminar
Course ID:	LAW 7928
Credits:	1
Term:	Spring 2023 Law Semester
Instructor :	Bloom, Elizabeth M.
Grade:	High Honors

Course Description:

Offers additional support and training for students serving as Lawyering Fellows for the social justice component of the Legal Skills in Social Context (LSSC) class for first-year law students. Explores social justice topics covered in LSSC in greater depth. Offers students an opportunity to obtain training in the skills necessary to facilitate discussions of those topics. Examines theories of effective collaboration and group development and introduces techniques for fostering successful team dynamics. Provides guidance on how to engage in effective critique and feedback and how to supervise students in their project work.

Performance Highlights:

This was a one-credit class designed to support the work of students in their role as a Lawyering Fellow (LF) for the Legal Skills in Social Context course for first-year students, and Charlotte's performance was strong. An active participant in class discussions, she demonstrated a nuanced understanding of the systemic inequities created and reinforced by our legal system. She was also thoughtful about how best to facilitate first-year students' learning around these issues. Charlotte offered helpful insights – both in her discussion board posts and in class discussions – on creating an effective learning environment for students, cultivating a positive team dynamic, and managing conflict. She was consistently self-reflective in the role of a mentor and leader, and it was clear that she excelled in the role of LF in the classroom.

Date:	5.24.2023 11:08AM
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Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Charlotte Weiss
Exam #: 25279
Course Title: LSSC Lawyering Fellow
Course ID: LAW 7931
Credits: 3
Term: Spring 2023 Law Semester
Instructor : Mallory, Carol R.
Grade: High Honors

Course Description:

Assists LSSC faculty in all aspects of the first-year LSSC course. Working closely with a supervising faculty member, Lawyering Fellows provide critique and feedback on first-year students' written and oral work, create legal research plans, identify areas for field research, communicate with representatives from the partner organizations, and help to foster strong team dynamics and development.

Performance Highlights:

Charlotte did an outstanding job as a Lawyering Fellow (LF) for my Legal Skills in Social Context course. In that capacity Charlotte worked with a class of 14 first-year law students and was responsible for coordinating and managing the class's social justice research project in partnership with an abolitionist organization in Chicago. The students specific project focused on the ways institutional state actors created and perpetuated racial residential segregation in Chicago, with a particular focus on the Chicago Police Department and the Chicago Housing Authority. The project culminated in a final deliverable for the partner organization and a presentation to the community entitled, Politicians, Police, and Public Housing: The Capture of Space and Bodies in 20th Century Chicago.

Charlotte's strong intellect, professionalism, and inter-personal skills made her an excellent LF and demonstrate her potential to become an exceptional attorney. Charlotte was a consummate professional, who displayed exceptional organizational skills when helping students plan out and execute their work on the project. She also did an excellent job communicating and coordinating with our partner organization, the students, and myself. In addition, Charlotte was extremely adept at thinking strategically about how best to accomplish the work of the project; in that capacity, she proved herself to be a strong creative thinker with excellent problem-solving skills. Finally, Charlotte was exceptionally well-attuned to the needs of individual students and the dynamics of the team as a whole. Her positive and encouraging attitude helped to create a successful team dynamic and motivated the students to perform their best work.

Date: 5.17.2023 5:48PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Charlotte Weiss
Exam #: 24860
Course Title: Reflections on Lawyering
Course ID: LAW 7940
Credits: 1
Term: Fall 2022 Law Semester
Instructor : Eshghi, Nima R.
Grade: Honors

Course Description:

Offers students an opportunity to reflect on their legal work experiences. Examines the roles of lawyers and the nature of legal work, drawing on assigned readings, lectures, and students' own experiences. Discusses the professional obligations of lawyers and identifies skills and knowledge needed for effective lawyering. Considers both how students' own legal careers may develop over time and how the legal profession itself may evolve.

Performance Highlights:

Overall, you did a terrific job managing the demands of this course in light of the competing - and primary - demands of your judicial coop. Your insights about co-op, and particularly about the line one must walk when researching and presenting the various analyses and possibilities to a judge in a high-stakes setting, were particularly powerful. The difference between being an advocate and a neutral arbiter looms large for students in such co-ops, and you framed it particularly well and addressed it frankly.

Congratulations on great work during, and in conjunction with, your important co-op experience.

Date: 2.9.2023 9:13AM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Charlotte Weiss
Exam #: 14137
Course Title: Research Assistant
Course ID: LAW 7938
Credits: 2
Term: Summer 2022 Law Semester
Instructor : Mallory, Carol R.
Grade: High Honors

Course Description:

An upper level student in good standing may serve as a faculty Research Assistant. The student will work with a full-time faculty member on a supervised project relating to the faculty member's teaching or scholarly activities. The project will provide the student with supervised research and/or writing experience as well as an opportunity to engage in analytical discourse with the faculty member.

Performance Highlights:

Charlotte conducted research to assist me in planning for my upcoming Legal Skills in Social Context (LSSC) course. Each year in LSSC students work on a year-long social justice project in conjunction with a partner organization; the project my students were working on for the following year was on behalf of an abolitionist organization in Chicago. The work on these projects allows students to explore more concretely some of the curricular topics of the course, including the non-neutrality of law, narrative and metaphor in law, movement lawyering, and the role of lawyers in social movements. Charlotte did an excellent job finding appropriate readings for the students that would allow them to examine these topics in the context of the over policing of Black and Brown communities and the movement for abolition.

Date: 4.28.2023 11:05AM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Charlotte Weiss
Exam #: 14137
Course Title: Immigrant Justice Clinic
Course ID: LAW 7657
Credits: 8
Term: Summer 2022 Law Semester
Instructor : Gundavaram, Hemanth
Grade: High Honors

Course Description:

Offers students, under the supervision of clinical faculty and staff, an opportunity to provide legal services to noncitizen clients and to develop knowledge and skills in immigration law practice. Students interview, research, plan, investigate, write, counsel, negotiate, and advocate for their clients. Emphasizes client-centered lawyering, cross-cultural awareness, trauma-informed interviewing, and self-care.

Performance Highlights:

Charlotte completed the following work in the Clinic:

- Contacted numerous asylum seekers who were paroled into the U.S. to determine their representation needs on behalf of an immigration non-profit named Al Otro Lado.
- Interviewed and counseled clients about their one-year asylum filing deadline.
- Co-represented a client from Belarus seeking asylum based on his political activism against the Lukashenko government.
- Filed the client's I-589 asylum application with the Boston Immigration Court before the one-year deadline.
- Prepared the supplemental package, including the client affidavit, country conditions report, and legal brief based on political opinion and particular social group claims.
- Compiled other supporting documents, including relevant photographs, videos, and a list of potential Belarusian experts.

Charlotte demonstrated the following skills in the Clinic:

- Excellent client interviewing and counseling with a victim of trauma; extremely strong Spanish language skills in interviewing and interpreting.
 - Outstanding research and writing, especially in drafting an extremely compelling client affidavit and a persuasive and nuanced legal brief.
 - Wonderful attention to detail in all her work; excellent organization in balancing numerous responsibilities and tasks on a large case.
 - Endless support to other classmates, including peer review and edits of their work, but also on issues like vicarious trauma and self-care.
 - Regular participation in classroom discussion and engagement with seminar materials on doctrinal, theoretical, and practical issues.
 - A tireless and unwavering work ethic in defense of immigrant rights.
-

Date: 10.17.2022 5:50AM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Charlotte Weiss
Exam #: 14137
Course Title: Immigration Law
Course ID: LAW 7336
Credits: 3
Term: Summer 2022 Law Semester
Instructor : Gundavaram, Hemanth
Grade: High Honors

Course Description:

This course is designed to give the student an overview of U.S. immigration law. The focus is on the day-to-day practice of immigration law, including an examination of the substantive and procedural aspects of this practice, and a historical analysis of the changes in our immigration laws and policies. Topics covered include non-immigrant and immigrant classifications, the preference system for immigrants, grounds of inadmissibility and deportability, relief from removal, asylum, citizenship, administrative and judicial review, and the immigration consequences of crimes.

Performance Highlights:

- Performed exceptionally well on the final exam.
- Acquired a comprehensive understanding of immigration law.
- Demonstrated superb legal writing and analysis skills.
- Completed many complicated and difficult immigration law hypotheticals.
- Participated frequently in class and brought much to our discussions.

Date: 10.14.2022 9:04PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Charlotte Weiss
Exam #: 14137
Course Title: Professional Responsibility
Course ID: LAW 7443
Credits: 3
Term: Summer 2022 Law Semester
Instructor : Drew, Melinda F.
Grade: Honors

Course Description:

This course focuses on the legal, ethical and professional dilemmas encountered by lawyers. Emphasis is on justice as a product of the quality of life that society provides to people rather than merely the process that the legal system provides once a crime or breach of duty has occurred. The course also provides students with a working knowledge of the American Bar Association's Model Rules of Professional Conduct and the Code of Professional Responsibility as well as an understanding of the underlying issues and a perspective within which to evaluate them. In addition, the course examines the distribution of legal services to poor and non-poor clients.

Performance Highlights:

Your written work in this course showed generally very good analytical skills and organization. Your written assignment concerning the issues raised in an engagement letter sent to a client was well written, well analyzed, and well organized. Your class presentation with three of your classmates was excellent and engaged the class in discussion. Your analysis of the problems on the final exam was very good.

Date: 9.20.2022 4:00PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Charlotte Weiss
Exam #:	14137
Course Title:	Intro Writing for Litigation
Course ID:	LAW 7690
Credits:	1
Term:	Summer 2022 Law Semester
Instructor :	Leahy, Stefanie E.
Grade:	Honors

Course Description:

Introduces students to litigation documents, including engagement and demand letters; complaints; answers; discovery requests (such as interrogatories, requests for the production of documents, and requests for admission); and motions. Considers audience, purpose, and components in drafting a document, taking into account relevant strategic considerations and general principles that apply to all litigation documents. Examines the protections associated with attorney-client privilege and attorney work product. Offers students an opportunity to review and draft a variety of litigation documents, to find and modify sample documents, and to find and apply the rules of the relevant jurisdiction.

Performance Highlights:

Over the course of two weeks, Charlotte had the opportunity to work collaboratively with other students to discuss and draft a variety of litigation documents. Charlotte displayed strong oral communication skills and was able to work independently, as well as efficiently in groups. Considering the amount of work required in such a short period of time, Charlotte also displayed strong time management skills.

Charlotte produced a case brief related to the operation of the work product doctrine in MA courts, edited a Complaint, submitted "research request" supervisor emails, analyzed documents for privilege, and produced a 5 page Motion in Limine. In the final reflection for the course, she highlighted her main takeaways from this introduction to litigation writing, including the importance of editing as well as the importance of listening and asking questions to create a strong first draft.

Charlotte has strong research and writing skills and is a positive presence in the classroom. I look forward to seeing her continued success and development in the future.

Date:	9.13.2022 7:04PM
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Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Charlotte Weiss
Exam #: 13450
Course Title: Constitutional Law
Course ID: LAW 6101
Credits: 4
Term: Spring 2022 Law Semester
Instructor : Paul, Jeremy R.
Grade: Honors

Course Description:

Studies the techniques of constitutional interpretation and some of the principal themes of constitutional law: federalism, separation of powers, public vs. private spheres, equality theory and rights analysis. The first part of the course is about the powers of government. The second part is an in-depth analysis of the 14th Amendment.

Performance Highlights:

You demonstrated sound knowledge of key constitutional issues.

You displayed an ability to produce excellent analysis of contested points.

Your writing is clear and effective.

Date: 6.13.2022 10:12AM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Charlotte Weiss
Exam #: 13450
Course Title: Contracts
Course ID: LAW 6102
Credits: 5
Term: Spring 2022 Law Semester
Instructor : Phillips, David M.
Grade: Honors

Course Description:

This course examines the legal concepts governing consensual and promissory relationships, with emphasis on the historical development and institutional implementation of contract theory, its relationship and continuing adaptation to the needs and practice of commerce, and its serviceability in a variety of non-commercial contexts. Topics covered include contract formation, the doctrine of consideration, remedies for breach of contracts, modification of contract rights resulting from such factors as fraud, mistake and unforeseen circumstances, and the modern adaptation of contract law to consumer problems. This course also introduces students to the analysis of a complex statute: the Uniform Commercial Code.

Performance Highlights:

Your performed well on the challenging multiple-choice first part of the examination.

Your answers to the essay problems evinced good knowledge of contract law and competence in applying that law to the facts of the problems.

Your class participation was simply outstanding. Thank you.

Date: 6.2.2022 3:43PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Charlotte Weiss
Exam #: 13450
Course Title: Legal Skills in Social Context
Course ID: LAW 6160
Credits: 2
Term: Spring 2022 Law Semester
Instructor : Mallory, Carol R.
Grade: High Honors

Course Description:

The LSSC Social Justice component immediately applies students' legal research and writing skills in using law as a tool for social change. LSSC links students' pre-law school thinking with the new legal culture in which they find themselves. In the first semester, they begin by forging their own team lawyering dynamic in discussing assigned readings and in preparing, and presenting, several advocacy exercises and written assignments. In the second semester, students apply and consolidate their new legal research and writing skills in addressing an intensive real-life social justice project for a selected client organization. LSSC student teams develop their legal and cooperative problem-solving skills and knowledge while producing real client work of a quality that far exceeds the ordinary expectations of first-year law students. May be repeated once.

Performance Highlights:

As a part of the LSSC course, a group of law students, called a "Law Office" (LO), work together on a year-long social justice project on behalf of a community-based organization. Charlotte was a member of LO10, which worked on a project on behalf of a Chicago non-profit whose mission is to support grassroots organizations and movement building around the abolition of the prison-industrial complex (due to the nature of their work, the organization wishes to remain anonymous.) The focus of LO10's project was on the history of the Chicago Police Department (CPD), the historical efforts to reform it, and why those efforts have failed. The LO researched statutes, city ordinances, police oversight mechanisms, budgets, police unions, prominent political actors, and individual activists and movements for reform. The LO's project culminated in the creation of a website to catalogue their extensive research. The LO presented the results of their research to the community in a presentation entitled "The Past is The Present: The violent anti-Black legacy of policing in Chicago and why abolition is the only path forward."

As a whole, LO10 was the most collaborative, collegial, high functioning, and effective LO I have had the pleasure to work with in the seven years I've been teaching this course. As a group the law office held themselves to an extremely high standard; their performance—individually, in sub-groups, and as a group—was exceptional, and it was evident in their stellar final work product.

Charlotte's performance in this portion of the class was equally strong. Charlotte engaged deeply with the social justice issues covered in this course; she made valuable contributions to the classroom discussions of these issues and wrote thoughtful and insightful reflective essays on the assigned topics. Charlotte was also an invaluable member of the LO in terms of the project's overall success; she was an active participant in discussions about the goals of the project and how best to achieve them and did an exceptional job researching and mapping the budget of the Chicago Police Department over time. Charlotte also volunteered to take on significant responsibilities throughout the course of the year. In particular, Charlotte took on the herculean task of compiling and organizing the research from all of the various sub-groups into a final work product—a difficult task, but one that she handled professionally and with grace. Additionally, Charlotte volunteered to be one of the presenters for the group's final presentation. With her co-presenters, Charlotte was able to synthesize the enormous amount of research the LO had compiled, pull out the themes and takeaways from the research, and organize a presentation that was informative, dynamic, and engaging. In Charlotte's own portion of the presentation, she demonstrated a natural

affinity for public speaking that will serve her well as an advocate. Overall, Charlotte was a well-regarded member of the LO who had the ability to work well with all of her classmates. Her positive attitude, commitment to the project, and willingness to take on significant responsibility greatly contributed to the LO's overall positive team dynamic and success.

Date: 5.31.2022 4:15PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Charlotte Weiss
Exam #:	13450
Course Title:	LSSC: Research & Writing
Course ID:	LAW 6165
Credits:	2
Term:	Spring 2022 Law Semester
Instructor :	Mallory, Carol R.
Grade:	Honors

Course Description:

Competent and effective legal research and writing skills are the foundation for students' success in law school and in their legal careers. In LSSC's Legal Analysis, Research and Writing component, students learn about the organization of the American legal system, the sources and construction of laws, and how the application of laws may vary with the specific factual situation. Students learn how to research the law to find applicable legal rules, how to analyze and apply those rules to a factual situation, and how to communicate their legal analysis clearly and concisely to different audiences.

Performance Highlights:

Charlotte's performance in this class was excellent. Charlotte has strong analytical skills; her analysis was always well-supported by the law and she possesses the ability to think creatively about the application of law to fact that will make her an effective advocate. Charlotte's research skills are impressive as well; her research is always thorough, and she is able to clearly distill the relevant authority in furtherance of her analysis. Charlotte's written work was equally strong; she successfully completed multiple objective and persuasive memoranda, culminating with a memorandum in support of a motion for summary judgment that presented compelling arguments on behalf of her client. Finally, Charlotte demonstrated a natural affinity for oral advocacy; in her final oral argument she delivered a well-conceived and persuasive argument on behalf of her client and did so with impressive poise and confidence. In short, Charlotte possesses the intellect and skill to be an exceptional attorney.

Date: 5.31.2022 4:14PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Charlotte Weiss
Exam #: 13450
Course Title: Criminal Justice
Course ID: LAW 6103
Credits: 4
Term: Spring 2022 Law Semester
Instructor : Ramirez, Deborah A.
Grade: Honors

Course Description:

In this course, students are introduced to the fundamental principles that guide the development, interpretation and analysis of the law of crimes. They are also exposed to the statutory texts—primarily the Model Penal Code, but also state statutes. In addition, students are introduced to the rules and principles used to apportion blame and responsibility in the criminal justice system. Finally, students examine the limits and potential of law as an instrument of social control.

Performance Highlights:

Overall, your performance in this class was excellent. On the exam, you did a very good, and, at times excellent job of analyzing the Model Penal Code issues presented by the factual scenario in question one. On question two, you did an excellent job of analyzing the federal search and seizure issues that might be raised by the attorneys for Cougar and Samuel. In particular, you did an excellent job of analyzing stop and frisk of Cougar by Detective Donovan.

Date: 5.31.2022 2:32PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Charlotte Weiss
Exam #: 12956
Course Title: Legal Skills in Social Context
Course ID: LAW 6160
Credits: 2
Term: Fall 2021 Law Semester
Instructor : Mallory, Carol R.
Grade: High Honors

Course Description:

The LSSC Social Justice component immediately applies students' legal research and writing skills in using law as a tool for social change. LSSC links students' pre-law school thinking with the new legal culture in which they find themselves. In the first semester, they begin by forging their own team lawyering dynamic in discussing assigned readings and in preparing, and presenting, several advocacy exercises and written assignments. In the second semester, students apply and consolidate their new legal research and writing skills in addressing an intensive real-life social justice project for a selected client organization. LSSC student teams develop their legal and cooperative problem-solving skills and knowledge while producing real client work of a quality that far exceeds the ordinary expectations of first-year law students. May be repeated once.

Performance Highlights:

Legal Skills in Social Context is a year-long course. Please refer to the Spring 2022 semester for the final evaluation.

Date: 6.6.2022 1:49PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Charlotte Weiss
Exam #: 12956
Course Title: LSSC: Research & Writing
Course ID: LAW 6165
Credits: 2
Term: Fall 2021 Law Semester
Instructor : Mallory, Carol R.
Grade: Honors

Course Description:

Competent and effective legal research and writing skills are the foundation for students' success in law school and in their legal careers. In LSSC's Legal Analysis, Research and Writing component, students learn about the organization of the American legal system, the sources and construction of laws, and how the application of laws may vary with the specific factual situation. Students learn how to research the law to find applicable legal rules, how to analyze and apply those rules to a factual situation, and how to communicate their legal analysis clearly and concisely to different audiences.

Performance Highlights:

LSSC: Research & Writing is a year-long course. Please refer to the Spring 2022 semester for the final evaluation.

Date: 6.2.2022 3:14PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Charlotte Weiss
Exam #: 12956
Course Title: Property
Course ID: LAW 6105
Credits: 4
Term: Fall 2021 Law Semester
Instructor : Kelley, Melvin J.
Grade: Honors

Course Description:

This course covers the major doctrines in American property law, including trespass, servitudes, estates in land and future interests, landlord-tenant relationships, nuisance, and takings. Students are introduced to rules, policies, and current controversies.

Performance Highlights:

Demonstrated substantial knowledge of core U.S. Property Law doctrine and associated public policy considerations as well as a solid capacity to mobilize these insights to assess novel fact patterns. Excellent participation in class discussions which facilitated deeper examination of course materials. A pleasure and a joy to have in class.

Date: 2.24.2022 1:54PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Charlotte Weiss
Exam #: 12956
Course Title: Torts
Course ID: LAW 6106
Credits: 4
Term: Fall 2021 Law Semester
Instructor : Kahn, Jonathan D.
Grade: Honors

Course Description:

This course introduces students to theories of liability and the primary doctrines limiting liability, which are studied both doctrinally and in historical and social context. The course includes a brief consideration of civil remedies for intentional harms, but mainly focuses on the problem of accidental injury to persons and property. It also provides an introductory look at alternative systems for controlling risk and allocating the cost of accidents in advanced industrial societies.

Performance Highlights:

Demonstrated a clear grasp of key tort principles and the contexts in which they apply.

Did a reasonable job of issue spotting and applying understandings of theories of responsibility and alternatives to evaluate and apply legal rules to specific situations.

Your analysis of legal problems was generally sound.

Your class participation was consistent, thoughtful, and constructive. It was a pleasure having you join in discussions.

Date: 2.1.2022 9:39AM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Charlotte Weiss
Exam #: 12956
Course Title: Civil Procedure
Course ID: LAW 6100
Credits: 5
Term: Fall 2021 Law Semester
Instructor : Williams, Lucy A.
Grade: Honors

Course Description:

Introduces students to the procedural rules that courts in the United States use to handle noncriminal disputes. Designed to provide a working knowledge of the Federal Rules of Civil Procedure and typical state rules, along with an introduction to federalism, statutory analysis, advocacy, and methods of dispute resolution. Examines procedure within its historical context.

Performance Highlights:

- You identified virtually all of the issues.
 - Your analysis reflected a solid understanding of the complex materials covered in the course.
 - You routinely cited to relevant case law.
 - Your discussions of the Erie doctrine and summary judgment were particularly strong.
 - Your paper was well written
-

Date: 1.20.2022 6:33PM

Fall 2022 : Charlotte J Weiss - Fall 2022 Early (94584) (U.S. Dist. Court, Dist. of Mass., Judge Boal (Boston, MA))

EMPLOYER FINAL EVALUATION

Approve	Yes
Requested On	Jan 03, 2023 9:59 am
Student	Charlotte J Weiss
Date Employed From:	September 12, 2022
Date Employed To:	December 23, 2022
Address	Moakley Courthouse, One Courthouse Way, Boston, MA
Employer Name	U.S. Dist. Court, Dist. of Mass., Judge Boal (Boston, MA)
1) Areas of law engaged in, and level of proficiency	Charlotte drafted numerous mediation and bench memoranda. She also conducted multiple shorter research projects on discrete issues, including referrals to bankruptcy court, Rule 43 of the Federal Rules of Civil Procedure, 42 U.S.C. § 1983 claims; and Rule 35 medical examinations. Finally, she prepared a chart regarding local rules on disclosure of third-party litigation financing agreements.
2) Skills demonstrated during the co-op	Charlotte has strong research and writing skills and good attention to detail. She is bright and engaged.
3) Professionalism, work ethic, and responsiveness to feedback	Charlotte was very professional and hard working. She actively sought feedback on her work. She also asked thoughtful and insightful questions about many things, including research processes and writing preferences, which she then incorporated into her work.
4) Ability to work with colleagues and clients; ability to integrate knowledge from other disciplines	Charlotte was engaged, cheerful, and just a pleasure to have in chambers.
5) Further details about the student's performance	Given our experiences with Charlotte this semester, we believe that she will make an excellent lawyer.

Submitted by: Heidsha Sheldon

Date submitted: January 3, 2023

Help Desk: 703-373-7040 (Hours: Mon-Fri. 9am-8pm EST)
[Privacy Policy](#) | [Terms of Use](#)

June 20, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is with great pleasure that I write to recommend Charlotte Weiss for a clerkship in your chambers. I believe Ms. Weiss's exceptional legal research and writing skills, her strong work ethic and interpersonal skills, as well as her commitment to using the law to advance social justice, make her a uniquely good fit for a clerkship in your chambers. I initially had the pleasure of getting to know Ms. Weiss when she was a student in my Legal Skills in Social Context (LSSC) course during her first year of law school. LSSC is a year-long required course for all first-year students at Northeastern and has two components. Half of the class is a traditional first-year legal research and writing class; in the other component of the class students work on an intensive year-long social justice project on behalf of a partner organization. I was so impressed with Ms. Weiss's performance in LSSC that I hired her as a Research Assistant the following summer, and as a Lawyering Fellow ("LF") for LSSC in her second year. Her performance in all these roles, leaves me with no doubt that she possesses the intellect, skill, professionalism, and work ethic to be a successful law clerk.

Ms. Weiss possesses a keen intellect, and I have consistently been impressed by her ability to think creatively about the application of law to fact that is required of an effective advocate. Likewise, Ms. Weiss employs a thoughtful and creative approach to her research, and I have always felt confident in the thoroughness and reliability of her results. Her adeptness at both legal analysis and research was evident in her strong performance in my class during her first year as well as in the research she did for me during the summer of her second year. Ms. Weiss also has exceptional communication skills, both written and oral. Her written work is always clear, concise, and well-organized. As a speaker she is extremely articulate and able to convey her thoughts effectively in a variety of settings.

The strength of Ms. Weiss's legal skills is also demonstrated in her academic record. Although Northeastern does not have traditional grades or class rank, Ms. Weiss's record of receiving Honors and High Honors in all her courses is a remarkable accomplishment and places her at the top of her class. Ms. Weiss's evaluation from her first co-op—with Judge Boal of the United States District Court of Massachusetts—also notes the strength of her research and writing skills as well as her strong work ethic and professionalism.

In addition to excelling in the traditional "hard skills" required in legal practice, Ms. Weiss possesses a unique combination of personal qualities that make her an exceptional colleague and a joy to work with. Ms. Weiss possesses innate and strong emotional intelligence, is deliberately conscientious of others, and has a positive, optimistic attitude that is infectious. These strong collaboration skills were evident in the work she did on her LSSC class's social justice project. That portion of LSSC requires students to work collaboratively on a year-long project culminating in a single deliverable for their partner organization. Ms. Weiss's exceptional interpersonal skills were instrumental to the class's successful completion of the project. She not only took on significant responsibility for the project herself but worked to ensure that each of her classmates felt that their contributions were valued and respected. In so doing, she inspired her classmates to do their best work and helped establish a trusting, effective working relationship. Her strong interpersonal skills were also evident in her role as an LF, where she served as a valued mentor to individual students and guided the class in the successful completion of their own project.

Moreover, Ms. Weiss is extremely well-organized, hardworking, and thoughtful in everything she does. These qualities were most evident in the work she did for me as a LF. The LF effectively serves as the project manager for the students' project and coordinates with the partner organization to ensure that the students' plan meets the organization's needs. In that capacity, Ms. Weiss demonstrated that she is a strong creative thinker, possesses excellent problem-solving skills, and is exceedingly well-organized.

In short, Ms. Weiss is a highly intelligent, hard-working, and lovely person who I consider myself lucky to have had the pleasure to work with. I have no doubt she would be an exceptional law clerk.

Please feel free to contact me if you should have any questions or wish to discuss her qualifications further.

Sincerely,

Carol R. Mallory
Teaching Professor
c.mallory@northeastern.edu
617-373-5841

Carol Mallory - c.mallory@northeastern.edu - 6173735841



Lucy Williams
Professor of Law
Faculty Director, Center for Public
Interest Advocacy and Collaboration
Co-Director, Program on Human
Rights and the Global Economy

Office of the Faculty
Cargill Hall - 059
400-416 Huntington Avenue
Boston, MA 02115

June 26, 2023

The Honorable Judge Jamar Walker
Walter E. Hoffman
United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I write with great enthusiasm to recommend Charlotte Weiss for a judicial clerkship. As a student in my Civil Procedure and Social Welfare Law courses, Charlotte demonstrated a comprehensive understanding of procedural law and constitutional doctrines, and a commitment to using the law to secure equitable and just remedies for her future clients. During Civil Procedure, Charlotte demonstrated substantial knowledge of the Federal Rules of Civil Procedure and relevant case law. Her analysis on the final examination reflected a sophisticated understanding of the complex materials covered in the course, with an especially strong discussion of the Erie doctrine and summary judgment.

During Social Welfare Law, Charlotte demonstrated a deep understanding of the complexities of the U.S. social welfare system through analyzing the intricate interplay of statutes, regulations, and constitutional doctrines. Apart from her academic achievements, however, what I have most admired about Charlotte is her passion for learning and her dedication to understanding the complexities of statutory and constitutional interpretations.

Charlotte is a dogged learner who seeks to understand the nuances and relationships between judicial opinions. Her questions in class reflect a strong understanding of the material, probing how judges analyze identical case law to arrive at divergent conclusions and how legal interpretation ultimately impacts social policy and behavior. Her questions also reflect a deep care for who the law ultimately impacts. During office hours, Charlotte often reflects on how her learning about statutory entitlements and administrative procedures informs her prior legal experience advocating for unaccompanied migrant children on the U.S.-Mexico border.

She sees the process of studying law not only as an academic endeavor, but also as a practical tool in her future advocacy as an attorney. After law school, Charlotte plans to represent unaccompanied children in court and ultimately work in immigration impact litigation. With her

proficiency in procedural law, her careful reading of case law, and her understanding of the social dimensions of the law, Charlotte is well prepared to apply her knowledge and skills in a clerkship setting. It has been a pleasure to teach her over the past two years and I look forward to seeing all she will contribute to the legal profession. I recommend her to you without hesitation.

Sincerely,

A handwritten signature in black ink that reads "Lucy A. Williams". The signature is written in a cursive style and is placed on a light gray rectangular background.

Lucy Williams
Professor of Law
Faculty Director, Center for Public Interest Advocacy and Collaboration
Co-Director, Program on Human Rights and the Global Economy





Northeastern University

School of Law

June 24, 2023

RE: Recommendation Letter for Charlotte Weiss for Judicial Clerkship

Clinical Programs

Mailing Address:

School of Law Clinics
Dockser Hall, Suite 140
360 Huntington Ave
Boston, MA 02115

Office:

School of Law Clinics
Dockser Hall, Suite 140
65 Forsyth St.
Boston, MA 02115
Tel: 617.373.4000
Fax: 617.373.8236
northeastern.edu/law

Contact Info:
h.gundavaram@
northeastern.edu
617-373-6802

Dear Judge:

I taught and supervised Charlotte when she was a student attorney in the Immigrant Justice Clinic and a student in my Immigration Law course. She consistently demonstrates excellent legal research and writing skills, endless dedication to her learning and to her fellow colleagues, and a deep care for immigrant and human rights. She would make an excellent addition to your chambers.

In the Clinic, Charlotte co-represented a client from Belarus seeking asylum based on his political activism against the Alexander Lukashenko regime. She prepared and filed the client's I-589 asylum application with the Boston Immigration Court and drafted supplemental materials, including a client affidavit, country conditions report, and legal brief. She demonstrated outstanding legal research and writing skills in drafting a compelling client affidavit and a persuasive and nuanced legal brief. She also displayed excellent client interviewing and counseling with a victim of trauma. The client was ultimately granted asylum!

In addition to her excellent legal research and writing skills, Charlotte demonstrated tireless dedication to her learning and offered constant support to her fellow classmates. In Immigration Law, she contributed much to the classroom discussion, asking clarifying questions that demonstrated a strong grasp of complex immigration topics including removal, inadmissibility, and deportability. In the Clinic, Charlotte provided endless support to her classmates through peer review of legal documents, advice on client interviewing and counseling, and sharing self-care practices by drawing on her experiences interviewing migrant children at ProBAR.

Given her judicial internship with Judge Boal at the U.S. District Court of Massachusetts and her immigrants' rights work, including at the Clinic and her current internship with the ACLU Immigrants' Rights Project, Charlotte has demonstrated an unwavering commitment to public interest law. It has been a pleasure to teach her. I look forward to seeing all she will contribute to the legal profession.

Sincerely,

A handwritten signature in black ink, appearing to read "Hemanth C. Gundavaram".

Professor Hemanth C. Gundavaram
Director, Immigrant Justice Clinic
Associate Dean for Experiential Education
Northeastern University School of Law

CHARLOTTE JANE WEISS

279 Pearl Street, Cambridge, MA, 02139 | weiss.ch@northeastern.edu | (818) 917-4871

WRITING SAMPLE

The attached writing sample is the final version of a bench memorandum I prepared during my judicial internship with Judge Boal. Identifying details and docket citations have been omitted for confidentiality purposes. I received minor edits in the process of drafting the memorandum.

BENCH MEMORANDUM

TO: Judge Boal

FROM: Charlotte Weiss

DATE: 2/28/2023

RE: Proposed report and recommendation (“R&R”) on Defendant’s motion to dismiss for lack of Sherman Act standing and under 12(b)(6).

I. FACTUAL AND PROCEDURAL HISTORY¹

Defendant is a corporation. Plaintiff is a former employee of Defendant. Plaintiff signed an employment agreement with Defendant which included a limitation on disclosing confidential information and/or trade secrets.

Plaintiff subsequently resigned from Defendant. Since his departure, Plaintiff has been unable to secure work, and he has been unsuccessful in his attempts to obtain letters of reference or personnel evaluations from Defendant. One organization, Company X, to which Plaintiff applied informed him that the individuals he provided as references at Defendant did not respond to Company X’s requests for information.

Plaintiff filed pro se a complaint alleging violations of the Sherman Act. In the complaint, Plaintiff alleges that his employment agreement is unlawful under antitrust laws. Specifically, he argues that the agreement is too broad without any temporal or geographic limitation. Plaintiff

¹ Because this case is presently before this Court on a motion to dismiss, I set forth the facts taking as true all well-pleaded allegations in the complaint and drawing all reasonable inferences in Plaintiff’s favor. See Morales-Tañon v. P.R. Elec. Power Auth., 524 F.3d 15, 17 (1st Cir. 2008).

also asserts that the agreement does not define the information to which he was exposed that would allow him to break Defendant's confidentiality or otherwise develop something that presented an unfair business interest. The above components, Plaintiff asserts, result in an overly restrictive contract.

Plaintiff also appears to allege that Defendant has entered, formally or informally, into a "no-poach" agreement with competitors to unnecessarily restrain his employment mobility. Plaintiff acknowledges that he is not personally aware of any "no-poach" agreement, but he seems to assert that such an agreement can be implied from Defendant's refusal to provide him with a reference.

Defendant filed the instant motion to dismiss.

II. ANALYSIS

Defendant contends that Plaintiff does not have antitrust standing, nor has he stated a claim under section 1 of the Sherman Act.

1. Private Right Of Action

Pursuant to section 1 of the Sherman Act, "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." 15 U.S.C. § 1. The Sherman Act does not provide a private right of action. See id. However, the Clayton Act provides in relevant part that "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor . . . and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee." 15 U.S.C. § 15(a). The Clayton Act further provides that "[a]ny person, firm, corporation, or association shall be entitled to sue for and have injunctive relief . . . against threatened loss or damage by a violation of the antitrust

laws.” Id. § 26. Because Plaintiff is proceeding pro se, I suggest construing his claim as one brought pursuant to the Clayton Act.²

2. Antitrust Standing

Before assessing the merits of the underlying claim, a court must determine whether the plaintiff has standing to proceed. See Donovan v. Digit. Equip. Corp., 883 F. Supp. 775, 781 (D.N.H. 1994). In an antitrust case, a plaintiff must establish both constitutional standing and antitrust standing. In re Aluminum Warehousing Antitrust Litig., 833 F.3d 151, 157 (2d Cir. 2016). The purpose of the antitrust standing doctrine is “to avoid overdeterrence” and to “ensure that suits inapposite to the goals of the antitrust laws are not litigated and that persons operating in the market do not restrict procompetitive behavior because of a fear of antitrust liability.” Serpa Corp. v. McWane, Inc., 199 F.3d 6, 10 (1st Cir. 1999) (citations and quotation marks omitted). “To further this purpose, we seek to ensure that the prospective antitrust plaintiff has suffered an injury of the kind antitrust laws were intended to prevent, such that the plaintiff is a proper party to bring a federal antitrust suit.” Vazquez-Ramos v. Triple-S Salud, Inc., 55 F.4th 286, 293 (1st Cir. 2022).

The purpose of the Sherman Act is to ensure customers the benefits of price competition, which includes protecting their economic freedom to participate in the relevant market. See Associated Gen. Contractors of California, Inc. v. California State Council of Carpenters, 459 U.S. 519, 538 (1983). Specifically, the Sherman Act “rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the

² “Pleadings must be construed so as to do justice.” Fed. R. Civ. P. 8(e). Accordingly, any document filed by a party pro se must be construed liberally, and “a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” Erickson v. Pardus, 551 U.S. 89, 94 (2007) (citation and quotation marks omitted).

lowest prices, the highest quality and the greatest material progress. . . .” N. Pac. Ry. Co. v. United States, 356 U.S. 1, 4 (1958). Although the Sherman Act outlaws all agreements “in restraint of trade,” the Supreme Court has continually recognized that Congress only intended to prohibit “unreasonable restraints” to trade. State Oil Co. v. Khan, 522 U.S. 3, 10 (1997). Unreasonable restraints of trade include conduct such as price fixing, division of markets, and group boycotts. N. Pac. Ry. Co., 356 U.S. at 5. Contrastingly, conduct that impacts individual employment opportunities may not constitute an unreasonable restraint of trade. See Donovan, 883 F. Supp. at 783. In general, if conduct is in violation of the Sherman Act, “[it] may be expected to cause ripples of harm to flow through the Nation’s economy.” Blue Shield of Virginia v. McCready, 457 U.S. 465, 476–77 (1982).

To determine whether a plaintiff has antitrust standing, courts conduct “an analysis of prudential considerations aimed at preserving the effective enforcement of the antitrust laws.” RSA Media, Inc. v. AK Media Grp., Inc., 260 F.3d 10, 13 (1st Cir. 2001) (citation and quotation marks omitted). Specifically, courts use the following six-factor balancing test to determine whether a plaintiff has antitrust standing:

- (1) the causal connection between the alleged antitrust violation and harm to the plaintiff; (2) an improper motive; (3) the nature of the plaintiff’s alleged injury and whether the injury was of a type that Congress sought to redress with the antitrust laws (“antitrust injury”); (4) the directness with which the alleged market restraint caused the asserted injury; (5) the speculative nature of the damages; and (6) the risk of duplicative recovery or complex apportionment of damages.

Vazquez-Ramos, 55 F.4th at 293 (citation omitted).

A court must “consider the balance of factors in each case.” Sullivan v. Tagliabue, 25 F.3d 43, 46 (1st Cir. 1994). While no one factor is determinative, the First Circuit has explored both the issue of causation and the showing of an antitrust injury as important considerations in the balancing test. See Vazquez-Ramos, 55 F.4th at 293-94; Sullivan, 25 F.3d at 47 n.9. The first

and fourth factors specifically refer to causation. Vazquez-Ramos, 55 F.4th at 293. The third factor does not specifically raise the issue of causation, but the First Circuit has “defined ‘antitrust injury’ as injury of the type the antitrust laws were intended to prevent and that *flows from that which makes the defendants’ acts unlawful*.” RSA, 260 F.3d at 14 (citation and quotation marks omitted) (emphasis in original). Said differently, the alleged injury must be “the type of injury the antitrust violation would cause to competition.” Vazquez-Ramos, 255 F.4th at 294 (citation omitted).

With respect to an antitrust injury, “[a]nticompetitive . . . refers not to actions that merely injure individual competitors, but rather to actions that harm the competitive process.” Clamp-All Corp. v. Cast Iron Soil Pipe Inst., 851 F.2d 478, 486 (1st Cir. 1988) (citation omitted). “[T]he absence of anti-trust injury will generally defeat standing.” RSA, 260 F.3d at 14 (citation and quotation marks omitted).

Here, Defendant does not contend that Plaintiff lacks Article III standing, and indeed, it appears that he has constitutional standing. Defendant, however, asserts that Plaintiff lacks antitrust standing to bring a claim pursuant to the Sherman Act.

The factors here weigh against antitrust standing. Plaintiff has not adequately pleaded a causal connection between the employment agreement and his inability to secure employment. Specifically, he has not articulated how his inability to share Defendant’s confidential information and trade secrets has limited his opportunity to find work. Moreover, Plaintiff’s injury is not one that the antitrust laws intended to prevent.

As to the issue of antitrust injury, Plaintiff does not appear to have suffered one. First, the asserted antitrust injury does not seem to flow from Defendant’s allegedly unlawful action. Specifically, Plaintiff’s inability to find work does not appear to stem from the alleged restrictive

language of the agreement. Rather, it flows from Defendant's refusal to provide prospective employers with information about Plaintiff's employment, which does not constitute an antitrust violation. Second and more importantly, Plaintiff's alleged injury is not one that the antitrust laws were intended to prevent. Plaintiff alleges that the restrictive agreement limited his personal professional mobility and career prospects. However, the antitrust laws concern themselves not with injury to the individual, but rather to the competitive process as a whole. See Copperweld Corp. v. Indep. Tube Corp., 467 U.S. 752, 767 n. 14 ("[The] antitrust laws . . . were enacted for the protection of competition, not competitors.").

With respect to improper motive, Plaintiff has alleged nothing indicating that Defendant acted with bad intent in requesting that Plaintiff sign the employment agreement containing a confidentiality clause. Indeed, employment agreements with confidentiality provisions are common in the workplace and can allow for a freer exchange of confidential information between the employer and employee. See KW Plastics v. U.S. Can Co., No. 99-D-286-N, 2000 U.S. Distr. LEXIS 15885, at *68 (M.D. Ala. Oct. 6, 2000).

Furthermore, the issue of whether Plaintiff's damages are speculative does not weigh in his favor. "Damages may be considered speculative where the plaintiff's injury was indirect and possibly the result of intervening factors unrelated to the defendant's conduct." Donovan, 883 F. Supp. at 783. Plaintiff's injury here, his inability to obtain a job, does not appear to stem directly from the confidentiality provision of the employment agreement. Plaintiff does not attempt to explain how his inability to share confidential information or trade secrets has inhibited him from securing employment. As noted above, Plaintiff's inability to secure employment appears to stem instead from Defendant's refusal to provide prospective employers with Plaintiff's employment record.

In addition, there is a possibility of intervening factors wholly unrelated to Defendant's conduct here. Plaintiff alleges that he has been unable to secure employment in the last three years "during one of the hottest labor markets." However, Plaintiff does not provide information to show that he is otherwise qualified for the jobs to which he applied, nor does he indicate the number of applications he submitted. Because Plaintiff's injury is indirect and possibly the result of other factors unrelated to the Defendant's conduct, the issue of whether Plaintiff's damages are speculative does not weigh in his favor.

With respect to the issue of duplicative recovery, this risk is minor and weighs in favor of Plaintiff. In general, duplicative injury exists when one party seeks recovery for injuries similar to those that other parties have suffered. See Associated Gen. Contractors of California, 459 U.S. at 550. "[I]n the absence of an action by a party claiming a more direct antitrust injury...there is little risk of duplicative injury." Donovan, 883 F. Supp at 784. Here, no party claims a similar injury. In fact, given that Plaintiff's alleged antitrust injury is personal in nature because it relates to an individual inability to secure employment, it is unlikely that such a party exists. Thus, the risk of duplicative recovery in this action is likely low and weighs in favor of Plaintiff.

In light of the above, Plaintiff appears to lack antitrust standing to assert a Sherman Act claim, and Defendant's motion to dismiss could be granted on that basis alone. Because this will be an R&R, I have included an analysis under Rule 12(b)(6) as well.

3. Rule 12(b)(6)

Defendant argues that Plaintiff has failed to state a claim under section 1 of the Sherman Act.³ A section 1 claim has two elements: "First, there must be concerted action" and "[s]econd,

³ Section 1 of the Sherman Act "proscribes contracts and conspiracies in restraint of trade," while section 2 "prohibits the monopolization or attempted monopolization of an area of trade."

the actors' agreement must involve either restrictions that are per se illegal or restraints of trade that fail scrutiny under the rule of reason." Euromodas, Inc. v. Zanella, Ltd., 368 F.3d 11, 16 (1st Cir. 2004).

A. Concerted Action

Concerted action occurs when "two or more entities that previously pursued their own interests separately are combining to act as one for their common benefit." Copperweld, 467 U.S. at 769. Congress treats concerted behavior more strictly because "[c]oncerted activity inherently is fraught with anticompetitive risk." Id. at 768-69.

"[A]greements between two or more actors who operate within and for the benefit of a single economic enterprise do not satisfy the concerted action requirement of Section 1." Podiatrist Ass'n, Inc. v. La Cruz Azul De Puerto Rico, Inc., 332 F.3d 6, 13 (1st Cir. 2003) (citing Copperweld, 467 U.S. at 769).

Here, Defendant does not appear to be engaging in concerted action. Although individual members of Defendant's organization may have collaborated in the drafting of Defendant's employment agreement, activity within a single company does not constitute concerted action.

Moreover, although Plaintiff seems to imply that Defendant is collaborating with Company X and other companies to prevent him from obtaining employment by way of "no-poach" agreements, he does not allege any facts from which this Court could determine such agreements exist. Indeed, Plaintiff explicitly states that he is unaware of any "no-poach" agreements. Furthermore, Plaintiff has pointed to nothing, other than his own inability to obtain

Vazquez-Ramos, 55 F.4th at 296. Plaintiff does not state the section pursuant to which he brings his claims. Based on his pleadings, in particular that he focuses on his contract with Defendant and does not make any allegations regarding monopolization, it appears that he intended to bring a claim pursuant to section 1.

employment, to indicate any coordinated action between Defendant and other companies. In fact, Plaintiff's only allegations regarding interactions between Defendant and any other company show quite the opposite of concerted action. Specifically, Plaintiff alleges that Company X informed him that their requests for references to Defendant went unanswered.

In light of the above, concerted action does not exist in this case. Accordingly, the first element of a section 1 claim has not been met.

B. Rule of Reason⁴

Defendant argues that Plaintiff's claim also fails on the second element of a section 1 claim because he has not alleged any injury to competition or a market. Rather, Plaintiff contends that the restrictive covenant agreement impacted him, and him alone.

Restrictive covenant agreements "are not per se illegal, and therefore, must be analyzed under the rule of reason." Caudill v. Lancaster Bingo Co., Inc., No. 2:04-CV-695, 2005 WL 2738930, at *4 (S.D. Ohio. Oct. 24, 2005); see Polk Bros., Inc. v. Forest City Enterprises, Inc., 776 F.2d 185, 189 (7th Cir. 1985).

Under the rule of reason, courts engage in a "fact-specific assessment of 'market power and market structure . . . to assess the [restraint]'s actual effect' on competition." Vazquez-Ramos, 55 F.4th at 299 (quoting Copperweld, 467 U.S. at 768). This rule requires that the plaintiff first define the relevant market. Vazquez-Ramos, 55 F.4th at 296; Ohio v. Am. Express Co., 138 S. Ct. 2274, 2285 (2018) (stating that "courts usually cannot properly apply the rule of reason" for a section 1 claim "without an accurate definition of the relevant market"). The

⁴ Following Defendant's submission of its motion to dismiss and accompanying memorandum, the First Circuit issued a decision that outlines a new test to evaluate whether a restraint violates the rule of reason. See Vazquez-Ramos, 55 F.4th. In light of the First Circuit's recent decision, I have used the new test for my analysis.

relevant market is “the area of effective competition” (Am. Express, 138 S. Ct. at 2285) and encompasses both a relevant geographic market and a relevant product market. Flovac, Inc. v. Airvac, Inc., 817 F.3d 849, 853 (1st Cir. 2016).

After defining the relevant market, a court must define whether a restraint violates the rule of reason. The First Circuit has developed a three-part burden-shifting framework to make this determination. Vazquez-Ramos, 55 F.4th at 299; see Am. Express, 138 S. Ct. at 2284. First, the plaintiff must “prove that the challenged restraint has a substantial anticompetitive effect that harms consumers in the relevant market.” Vazquez-Ramos, 55 F.4th at 299; see Am. Express, 138 S. Ct. at 2284. Next, the burden shifts to the defendant to show “a procompetitive rationale for the restraint.” Vazquez-Ramos, 55 F.4th at 299; see Am. Express, 138 S. Ct. at 2284. Finally, the burden shifts back to the plaintiff to prove that “the procompetitive efficiencies could be reasonably achieved through less anticompetitive means.” Vazquez-Ramos, 55 F.4th at 299; see Am. Express, 138 S. Ct. at 2284. If the plaintiff does not meet his or her burden in the first step, the analysis need not proceed. See Am. Express, 138 S. Ct. at 2290.

Here, the only reference to geography in Plaintiff’s complaint is his allegation that the employment agreement includes no geographic scope. With respect to the alleged impacts of the agreement, he has not defined the geographic market or alleged a relevant product market. Accordingly, the first requirement of the rule of reason has not been met.

Even if Plaintiff had identified a relevant market, he would still have to plead that the employment agreement violates the rule of reason. He has not done so. Specifically, Plaintiff has not shown in his complaint that the employment agreement has a substantial anticompetitive effect that harms consumers. Although Plaintiff alleges that the employment agreement impacted his personal employment prospects, he has not alleged that the agreement impacts anyone else.

Because Plaintiff has not met his burden in the first part of the three-part test, he has not demonstrated that the employment agreement violates the rule of reason.⁵ Accordingly, the second element of a section 1 claim has not been met either. In light of the above, Plaintiff has failed to state a claim under the Sherman Act.

III. RECOMMENDATION

In light of the above, I suggest that this Court issue an R&R recommending that the district judge to whom this case is assigned grant Defendant's motion to dismiss Plaintiff's complaint.⁶

⁵ Where Plaintiff has not met his initial burden, it is not necessary to conduct an analysis for the second and third parts of the test. See *Am. Express*, 138 S. Ct. at 2290.

⁶ Because Plaintiff is *pro se*, I considered suggesting that you recommend granting the motion to dismiss without prejudice to allow Plaintiff to refile and assert a different claim. However, it does not appear that any alternative cause of action would address his alleged injury.

Applicant Details

First Name	Margaret											
Last Name	Wells											
Citizenship Status	U. S. Citizen											
Email Address	margaretw@uchicago.edu											
Address	<table><tr><th>Address</th></tr><tr><td>Street</td></tr><tr><td>5454 South Shore Dr. Apt. 822</td></tr><tr><td>City</td></tr><tr><td>Chicago</td></tr><tr><td>State/Territory</td></tr><tr><td>Illinois</td></tr><tr><td>Zip</td></tr><tr><td>60615</td></tr><tr><td>Country</td></tr><tr><td>United States</td></tr></table>	Address	Street	5454 South Shore Dr. Apt. 822	City	Chicago	State/Territory	Illinois	Zip	60615	Country	United States
Address												
Street												
5454 South Shore Dr. Apt. 822												
City												
Chicago												
State/Territory												
Illinois												
Zip												
60615												
Country												
United States												
Contact Phone Number	9524657896											

Applicant Education

BA/BS From	Emory University
Date of BA/BS	May 2021
JD/LLB From	The University of Chicago Law School
	https://www.law.uchicago.edu/
Date of JD/LLB	June 1, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	
Moot Court Experience	Yes
Moot Court Name(s)	Hinton Moot Court

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	No
--------------------------------------	----

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Ginsburg, Thomas
tginsburg@uchicago.edu
773-834-3087

Zunkel, Erica
ezunkel@uchicago.edu
773-702-9494

Huq, Aziz
huq@uchicago.edu
773-702-9566

This applicant has certified that all data entered in this profile and any application documents are true and correct.

5454 South Shore Dr., Apt.
822 Chicago, IL 60615
(952) 465-7896

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby St., Norfolk, VA 23510

Dear Judge Walker,

I am a rising third-year law student at the University of Chicago Law School, and I am applying for a clerkship in your chambers for the 2024 term.

I am eager to clerk to build my legal research and writing skills and to contribute to the important work before the Eastern District of Virginia. In the Federal Criminal Justice Clinic (FCJC) this past year, I have had the opportunity to work on a post-conviction motion for early release from its conception through the District Court's decision to release our client. I worked on every step of this process, from gathering evidence from the client's friends and family, to conducting research on developing caselaw in the Seventh Circuit, to finally writing a substantial portion of our brief. Most meaningfully, I had the opportunity to draft our reply to the government. My experience in FCJC has shown me firsthand how powerful great legal research and writing can be. I hope to build on this experience in a clerkship and continue to develop these important skills for my future career.

In particular, I hope to clerk to obtain meaningful mentorship from a federal judge. My experience at the University of Chicago Law School has demonstrated the importance mentors can make on my legal career. Thanks to the guidance and encouragement from Professors Zunkel and Huq, I have gained invaluable practical research and writing experience. I hope that a clerkship will enable me to build a relationship with a judge and co-clerks that spans my legal career.

I have enclosed my resume, transcript, and writing sample. Letters of recommendation from Professors Aziz Huq, Erica Zunkel, and Thomas Ginsburg will arrive under a separate cover. Please do not hesitate to let me know if you require additional information.

Sincerely,

/s/ Margaret Wells

Margaret Wells

Enclosures

Margaret Wells

5454 South Shore Dr., Apt. 822, Chicago, IL 60615 | margaretw@uchicago.edu | (952) 465-7896

EDUCATION

The University of Chicago Law School, Chicago, IL

Juris Doctor, expected June 2024

Journal:

- *Chicago Journal of International Law*, Online Editor

Activities:

- Chicago Law Foundation, Vice President of Auction
- Law School Musical, Director
- Orientation Leader and Peer Advisor

Emory University, College of Arts and Sciences, Atlanta, GA

Bachelor of Arts in English and Political Science, *magna cum laude*, May 2021

Honors:

- Honors Thesis in English, "Seeking Transcendence in a Time of War: Theology and Saving Civilization in T.S. Eliot's *Four Quartets*"

Activities:

- Barkley Forum for Debate, Deliberation, and Dialogue, Competitive Debater and Historian

EXPERIENCE

Hon. Timothy B. Dyk, United States Court of Appeals for the Federal Circuit, Washington, D.C.

Law Clerk, August 2025 – August 2026

Sullivan & Cromwell LLP, New York, NY

Summer Associate, June 2023 – August 2023

Federal Criminal Justice Clinic, Chicago, IL

Student Staffer, September 2022 – Present

- Author compassionate release motions for incarcerated clients, resulting in a client's early release
- Engage in advocacy by drafting witness testimony and public comments for the U.S. Sentencing Commission regarding an updated Policy Statement to guide judges' use of compassionate release
- Interview clients' friends and family and draft letters of support for sentencing reduction motions

Professor Aziz Huq, The University of Chicago Law School, Chicago, IL

Research Assistant, June 2022 – Present

- Conduct research on post-*Dobbs* abortion-related data privacy for a law review article
- Proofread and create a bibliography for a forthcoming book on the rule of law

Kilpatrick Townsend & Stockton LLP, Atlanta, GA

Summer Associate, May 2022 – August 2022

Trademark Intern, May 2019 – August 2019

- Conducted legal research and drafted memoranda across trademark, corporate, and litigation groups
- Prepared demand letters and settlement agreements for trademark portfolio management
- Participated in pro bono clinics focused on a variety of issues including criminal justice and immigration
- Collected evidence for upcoming litigation from social media posts, web archives, and sales records

Glenbrook South High School, Glenview, IL

Assistant Debate Coach, October 2019 – August 2021

- Designed strategy briefs outlining possible perspectives on policy issues and counterarguments
- Developed curriculum on effective communication and evidence-based decision-making for 50+ students

INTERESTS AND LANGUAGE SKILLS

- HIIT and cycling workout classes, reality TV dating shows, attending baseball games, baking desserts
- Proficient in French



Name: Margaret E Wells
Student ID: 12335030

University of Chicago Law School

Academic Program History

Program: Law School
Start Quarter: Autumn 2021
Current Status: Active in Program
J.D. in Law

External Education

Emory University
Atlanta, Georgia
Bachelor of Arts 2021

Beginning of Law School Record

Autumn 2021			Attempted	Earned	Grade
Course	Description				
LAWS 30101	Elements of the Law Richard McAdams		3	3	178
LAWS 30211	Civil Procedure Diane Wood		4	4	179
LAWS 30611	Torts Saul Levmore		4	4	172
LAWS 30711	Legal Research and Writing Daniel Wilf-Townsend		1	1	178

Winter 2022			Attempted	Earned	Grade
Course	Description				
LAWS 30311	Criminal Law John Rappaport		4	4	180
LAWS 30411	Property Thomas Gallanis Jr		4	4	183
LAWS 30511	Contracts Bridget Fahey		4	4	179
LAWS 30711	Legal Research and Writing Daniel Wilf-Townsend		1	1	178

Spring 2022

Course	Description	Attempted	Earned	Grade
LAWS 30712	Legal Research, Writing, and Advocacy Daniel Wilf-Townsend	2	2	180
LAWS 30713	Transactional Lawyering Joan Neal	3	3	182
LAWS 40301	Constitutional Law III: Equal Protection and Substantive Due Process Aziz Huq	3	3	182
LAWS 43201	Comparative Legal Institutions Meets Substantial Research Paper Requirement Designation: Thomas Ginsburg	3	3	181
LAWS 44201	Legislation and Statutory Interpretation Ryan Doerfler	3	3	182

Autumn 2022

Course	Description	Attempted	Earned	Grade
LAWS 42301	Business Organizations Anthony Casey	3	3	181
LAWS 45801	Copyright Randal Picker	3	3	184
LAWS 46101	Administrative Law Thomas Ginsburg	3	3	181
LAWS 90221	Federal Criminal Justice Clinic Erica Zunkel Alison Siegler Judith Miller	1	0	
LAWS 95030	Moot Court Boot Camp Rebecca Horwitz Madeline Lansky	2	2	P

Winter 2023

Course	Description	Attempted	Earned	Grade
LAWS 40101	Constitutional Law I: Governmental Structure David A Strauss	3	3	179
LAWS 45701	Trademarks and Unfair Competition Omri Ben-Shahar	3	3	176
LAWS 53221	Current Issues in Criminal and National Security Law Meets Writing Project Requirement Designation: Michael Scudder	3	3	179
LAWS 90221	Federal Criminal Justice Clinic Erica Zunkel Alison Siegler Judith Miller	1	0	



Name: Margaret E Wells
Student ID: 12335030

University of Chicago Law School

		Spring 2023			
Course	Description		Attempted	Earned	Grade
LAWS 43244	Patent Law Jonathan Masur		3	3	183
LAWS 43253	Regulation of Banks and Financial Institutions Adriana Robertson		3	3	177
LAWS 47301	Criminal Procedure II: From Bail to Jail Alison Siegler		3	3	182
LAWS 90221	Federal Criminal Justice Clinic Erica Zunkel Alison Siegler Judith Miller		3	0	

End of University of Chicago Law School

OFFICIAL ACADEMIC DOCUMENT



Key to Transcripts of Academic Records

1. **Accreditation:** The University of Chicago is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. For information regarding accreditation, approval or licensure from individual academic programs, visit <http://csl.uchicago.edu/policies/disclosures>.

2. **Calendar & Status:** The University calendar is on the quarter system. Full-time quarterly registration in the College is for three or four units and in the divisions and schools for three units. For exceptions, see 7 Doctoral Residence Status.

3. **Course Information:** Generally, courses numbered from 10000 to 29999 are courses designed to meet requirements for baccalaureate degrees. Courses with numbers beginning with 30000 and above meet requirements for higher degrees.

4. **Credits:** The Unit is the measure of credit at the University of Chicago. One full Unit (100) is equivalent to 3 1/3 semester hours or 5 quarter hours. Courses of greater or lesser value (150, 050) carry proportionately more or fewer semester or quarter hours of credit. See 8 for Law School measure of credit.

5. Grading Systems:

Quality Grades

Grade	College & Graduate	Business	Law
A+	4.0	4.33	
A	4.0	4.0	186-180
A-	3.7	3.67	
B+	3.3	3.33	
B	3.0	3.0	179-174
B-	2.7	2.67	
C+	2.3	2.33	
C	2.0	2.0	173-168
C-	1.7	1.67	
D+	1.3	1.33	
D	1	1	167-160
F	0	0	159-155

Non-Quality Grades

- I **Incomplete:** Not yet submitted all evidence for final grade. Where the mark I is changed to a quality grade, the change is reflected by a quality grade following the mark I, (e.g. IA or IB).
- IP **Pass (non-Law):** Mark of I changed to P (Pass). See 8 for Law IP notation.
- NGR **No Grade Reported:** No final grade submitted
- P **Pass:** Sufficient evidence to receive a passing grade. May be the only grade given in some courses.
- Q **Query:** No final grade submitted (College only)
- R **Registered:** Registered to audit the course
- S **Satisfactory**
- U **Unsatisfactory**
- UW **Unofficial Withdrawal**
- W **Withdrawal:** Does not affect GPA calculation
- WP **Withdrawal Passing:** Does not affect GPA calculation
- WF **Withdrawal Failing:** Does not affect GPA calculation
- Blank:** If no grade is reported after a course, none was available at the time the transcript was prepared.

Examination Grades

- H Honors Quality
- P* High Pass
- P Pass

Grade Point Average: Cumulative G.P.A. is calculated by dividing total quality points earned by quality hours attempted. For details visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

6. **Academic Status and Program of Study:** The quarterly entries on students' records include academic statuses and programs of study. The Program of Study in which students are enrolled is listed along with the quarter they commenced enrollment at the beginning of the transcript or chronologically by quarter. The definition of academic statuses follows:

7. **Doctoral Residence Status:** Effective Summer 2016, the academic records of students in programs leading to the degree of Doctor of Philosophy reflect a single doctoral registration status referred to by the year of study (e.g. D01, D02, D03). Students entering a PhD program Summer 2016 or later will be subject to a

University-wide 9-year limit on registration. Students who entered a PhD program prior to Summer 2016 will continue to be allowed to register for up to 12 years from matriculation.

Scholastic Residence: the first two years of study beyond the baccalaureate degree. (Revised Summer 2000 to include the first four years of doctoral study. Discontinued Summer 2016)

Research Residence: the third and fourth years of doctoral study beyond the baccalaureate degree. (Discontinued Summer 2000)

Advanced Residence: the period of registration following completion of Scholastic and Research Residence until the Doctor of Philosophy is awarded. (Revised in Summer 2000 to be limited to 10 years following admission for the School of Social Service Administration doctoral program and 12 years following admission to all other doctoral programs. Discontinued Summer 2016.)

Active File Status: a student in Advanced Residence status who makes no use of University facilities other than the Library may be placed in an Active File with the University. (Discontinued Summer 2000.)

Doctoral Leave of Absence: the period during which a student suspends work toward the Ph.D. and expects to resume work following a maximum of one academic year.

Extended Residence: the period following the conclusion of Advanced Residence. (Discontinued Summer 2013.)

Doctoral students are considered full-time students except when enrolled in Active File or Extended Residence status, or when permitted to complete the Doctoral Residence requirement on a half-time basis.

Students whose doctoral research requires residence away from the University register *Pro Forma*. *Pro Forma* registration does not exempt a student from any other residence requirements but suspends the requirement for the period of the absence. Time enrolled *Pro Forma* does not extend the maximum year limit on registration.

8. **Law School Transcript Key:** The credit hour is the measure of credit at the Law School. University courses of 100 Units not taught through the Law School are comparable to 3 credit hours at the Law School, unless otherwise specified.

The frequency of honors in a typical graduating class:

Highest Honors (182+)
0.5%
High Honors (180.5+)(pre-2002 180+)
7.2%
Honors (179+)(pre-2002 178+)
22.7%

Pass/Fail and letter grades are awarded primarily for non-law courses. Non-law grades are not calculated into the law GPA.

P** indicates that a student has successfully completed the course but technical difficulties, not attributable to the student, interfered with the grading process.

IP (In Progress) indicates that a grade was not available at the time the transcript was printed.

* next to a course title indicates fulfillment of one of two substantial writing requirements. (Discontinued for Spring 2011 graduating class.)

See 5 for Law School grading system.

9. **FERPA Re-Disclosure Notice:** In accordance with U.S.C. 438(6)(4)(8)(The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without consent of the student.

Office of the University Registrar
University of Chicago
1427 E. 60th Street
Chicago, IL 60637
773.702.7891

For an online version including updates to this information, visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

Revised 09/2016

Professor Tom Ginsburg
*Leo Spitz Professor of International Law,
Ludwig and Hilde Wolf Research Scholar
and Professor of Political Science*
The University of Chicago Law School
1111 E. 60th Street
Chicago, IL 60637
tginsburg@uchicago.edu | 773-834-3087

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my pleasure to recommend Maggie Wells, a member of the class of 2024, for a clerkship in your chambers. Maggie is a very strong candidate. She is very bright, a natural leader and a strong writer, and I recommend her very highly.

I first met Maggie during the Spring Quarter of her 1L year when she enrolled in my elective course in Comparative Legal Institutions. This course is designed to encourage thinking about law from a broad interdisciplinary perspective. In particular, it looks at law across time and space, integrating literatures from political science and economics along with more conventional legal materials. We survey, among other legal systems, those of imperial China and classical Islam, focusing on judicial institutions and their core structures. Maggie was an enthusiastic class participant who always added value to the class discussion, and demonstrated the ability to think creatively in dealing with novel material.

Maggie decided to write a paper in lieu of the exam, crafting an essay on music and law with regard to police violence in France and the United States. This was clearly the tougher route for a grade, but she submitted an excellent essay that required a round of feedback according to Law School rules. We had the chance to discuss it and she revised according to my relatively few suggestions. The paper earned an A grade and I can verify that she is both a fine writer, whose first drafts will be in excellent shape, as well as someone who is responsive to suggestions.

In the Fall of 2022, Maggie enrolled as a student in my course in Administrative Law, which is of course a field in significant flux. She was an excellent addition to the class, reflecting her abiding interest in public service. She was an engaged and constructive participant in classroom discussions, whose interventions were always helpful in moving the class forward. She demonstrated a deep understanding of the material, and her serious commitment made the class much better. Maggie's exam was one of the stronger ones in the class of 60 students, which as a group was among the best I have ever taught. I estimate she was in the top ten percent. I see that my experience with Maggie was hardly unique, as she has done well in a broad array of classes.

Maggie is a thoughtful and fun person to be around. She is engaged in several student organizations and universally well liked by peers and faculty. She believes in mentorship, and herself has a good deal of experience in this regard. I believe that Maggie will be a wonderful person to mentor and to work with in chambers. She will soak up ideas, and turn around assignments quickly and with great skill.

The bottom line is that Maggie Wells is simply an excellent law student, who will be a smart, hardworking, and focused clerk, as well as a superb leader thereafter. I recommend her very highly and urge you to interview her. You will not be disappointed.

Please do not hesitate to contact me for further information or detail.

Sincerely,
Tom Ginsburg

Thomas Ginsburg - tginsburg@uchicago.edu - 773-834-3087



THE UNIVERSITY OF CHICAGO
THE LAW SCHOOL
Federal Criminal Justice Clinic

Erica Zunkel
Clinical Professor of Law
Associate Director, Federal Criminal Justice Clinic

T 773-702-0612
C 510-332-1490
ezunkel@uchicago.edu

June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Recommendation for Margaret Wells

Dear Judge Walker:

I give Margaret (“Maggie”) Wells my highest recommendation for a clerkship in your chambers. Maggie possesses unwavering determination, exceptional research and writing abilities, and a penchant for creativity that would make her an outstanding law clerk. Her overall academic record has established her as a top student at the Law School, with a GPA that puts her on track to graduate with Honors. Beyond her academic achievements, Maggie is a joy to work with, exhibiting a warm and amiable personality that aligns with her complete commitment to her work. Maggie has emphasized to me the significance of mentorship in her career, and one of the reasons she is pursuing a clerkship is to receive close guidance and tutelage from a federal judge.

This year, I had the privilege of working closely with Maggie in my Federal Criminal Justice Clinic, the country’s inaugural law clinic specializing in representing indigent clients charged with federal felony offenses. Because of the intense demands of my Clinic’s cases, we have a preference for third-year students who have more time in their schedules and who have taken advanced criminal law classes. Despite being a second-year student with a full academic course load and other extracurricular activities, including leadership roles in several Law School organizations, Maggie excelled in my Clinic. Throughout the year, I entrusted her with tasks that are usually reserved for my most skilled third-year students, and she exceeded all expectations.

Maggie’s dedication to her work and top-notch legal skills were on full display during her time in my Clinic. She represented individual clients and played a key role in my Clinic’s systemic efforts to expand federal compassionate release. Her remarkable breadth of work included writing a lengthy compassionate release motion and reply brief that secured early release for our client, who was a victim of the ATF’s stash house reverse sting operation. Maggie’s legal writing skillfully highlighted the extraordinary and compelling nature of our client’s unique circumstances, leading to our client’s well-deserved release ten years early (he was serving a 25-year mandatory minimum sentence). Throughout the writing process, Maggie was receptive



to feedback and diligently incorporated revisions to enhance our arguments' strength and clarity.

Moreover, Maggie was instrumental in our Clinic's advocacy efforts to enshrine an expansive compassionate release policy statement. She helped me prepare for my oral and written testimony before the U.S. Sentencing Commission by drafting the most legally complex section of the written testimony, which argued for changes in the law to be an enumerated "extraordinary and compelling" reason for release. Her nuanced and detail-oriented approach was a perfect fit for this challenging task. Maggie also assisted me with preparing for my oral testimony, including mooted me several times and providing fantastic suggestions that made my arguments stronger. Additionally, Maggie spearheaded my Clinic's efforts to ensure the new policy statement's success by researching and cataloging compassionate release cases, developing case screening tools, and writing comprehensive litigation primers for attorneys.

Beyond her exceptional legal skills, Maggie's professionalism and commitment to her community are noteworthy. She was always well-prepared for our team meetings and Clinic seminar and worked harmoniously with her student colleagues and my Clinic's social worker. Maggie is also deeply involved in various Law School extracurricular activities, holding leadership positions in the Chicago Law Foundation, American Constitution Society, and the Law School Musical.

Maggie is a special student. The same qualities she has shown during her time in my Clinic—brilliance, dedication, and conscientiousness—are attributes that will make her a wonderful clerk, especially when combined with her strong research and writing skills. If you would like to discuss Maggie's qualifications further, please do not hesitate to call me at (510) 332-1490.

Sincerely,

A handwritten signature in blue ink, appearing to read "Erica K. Zunkel".

Erica K. Zunkel
Clinical Professor of Law
Associate Director, Federal Criminal Justice Clinic

Aziz Huq

Frank and Bernice J. Greenberg Professor of Law
University of Chicago Law School
1111 East 60th Street | Chicago, Illinois 60637
phone 773-702-9566 | fax 773-702-0730
email huq@uchicago.edu
www.law.uchicago.edu

May 22, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Margaret Wells (University of Chicago Class of 2024), to the position of law clerk in your chambers. I know Margaret ("Maggie") through having taught her in a 1L class—an elective in Constitutional Law: Equal Protection and Due Process—and because she has worked for me as a research assistant since June 2022. Maggie put in a stellar performance in her 1L constitutional law class, and also has a very strong transcript. She has demonstrated the ability to achieve grades at the very top of her cohort across a range of topics in both public and private law. My own experience working with her as a research assistant suggests to me that she is diligent, thorough, careful, and analytically precise. She is also very personable, and a pleasure to have as a collaborator on law-related projects. I hence think that Maggie will be an absolutely stellar law clerk. Indeed, without any hesitation at all, I recommend her strongly in that capacity.

I taught Maggie in a 1L elective called Constitutional Law: Equal Protection and Due Process. This involved a great deal of history, and in particular focuses on the way in which different moments in history have shaped the selection of judicial controversies and the nature of the rules that emerge. Maggie wrote an absolutely terrific exam. I write complex, issue-intensive exams that demand an ability to read a detailed fact pattern and immediately perceive not just the presence of a legal issue, but also a host of interactions between the legal issue and the facts, and also the several alternative (often outcome dispositive) ways of framing the issue. I identify *ex ante* 200 distinct points and subpoints that could be raised based on the exam prompts, and then grade students accordingly. This approach means I obtain a dispersion of grades that ensures meaningful distinction. Maggie's exam was very close to the top grade. It excelled in terms of drafting skill and in terms of the knowledge on display in terms of comprehensiveness, complexity, and clarity by a substantial margin. She hence demonstrated a deep fluency with the legal issues, and a sophistication in making arguments using the law. In class, consistent with this, Maggie evinced the same sort of contextually nuanced sense of how law operates in the world. She was always respectful, but measured and forceful, in her responses—always ready to speak up for her perspective when others disagreed. I thought that all of her contributions elevated the level of the class, and added to her peers' experience.

More generally, Maggie has built up a terrific transcript with ample evidence of deep legal and analytic skills. She has hence obtained grades at the very top of her class in no less than ten courses. As I explain below, this is a really impressive achievement. It is all the more impressive because the classes involved are so varied. Maggie has secured very, very strong grades in Copyright, Administrative Law, Transactional Lawyering, and Property. (Her worst grades, I should note further, are from the first quarter of law school—when she seemed to have been finding her footing). Her performance hence suggests that she would quickly master a wide range of different legal problems and challenges, as would be needful in a fast-paced federal clerkship.

These grades, moreover, should be understood in the general context of Chicago assessment modalities. Unlike many other law schools, Chicago abjures grade inflation in favor of a very strict curve round a median score of 177 (which is a B in our argot). There is not large movement from the median. And because Chicago grades on a normal distribution, and because it is on the quarter system, it is possible to be very precise about where a student falls in a class as a whole. It is simply not possible to do this so with a grading system of the kind used by some of our peer schools: These are seemingly designed to render ambiguous and inscrutable differences between the second tier of students and the third- and fourth-tiers. This has two implications for Maggie's grades. The first is that the sheer number of A grades should be recognized as a really impressive achievement: It is common for students to have one or two such grades, but the sheer volume of such scores on Maggie's transcript is really impressive. Second, even where Maggie has not scored an A, her grades tend to place her in the top echelon of the class. Hers is, in short, a really impressive transcript. And it bears emphasis that I rarely see ones that are this good as hers in the round. (Maggie, I should note, did not participate in the write-on contest to Law Review because, at the time, she was very focused on transactional legal practice. Had she applied, I think she likely would have gotten onto the Review).

Maggie has also been a terrific research assistant. I have asked for her help on a number of projects, including one about the regulation of personal data pertaining to reproductive health and another concerning some original understanding questions related to Article I. On very varied projects, which required searches into different kinds of sources and databases, Maggie has consistently shown herself to be reliable, careful and thorough. I feel very lucky that I can lean on her judgment and skill in respect to legal research, and that I have never had to be concerned about untimely work. I think this experience goes directly to what it would be like to have Maggie working as a law clerk. And I cannot underscore enough how positive it was.

Aziz Huq - huq@uchicago.edu - 773-702-9566

Beyond this work, Maggie has been an active member of the law school community, contributing in many different ways. She put on and directed, for example, this year's law school musical: This is an immensely challenging logistical and artistic task, and I understand that Maggie executed it with aplomb and diplomacy. The result, I am told, was a terrific artistic success. She would also come to a clerkship with two summers' experience of law firms, and also a deep well of work with our federal criminal justice clinic.

Based on all this evidence, I have every expectation that Maggie will be an exceptionally good law clerk. I am thus a very keen supporter of her application, and very much hope you consider it seriously. I would be happy to answer any questions you have about Maggie's candidacy and can be reached at your disposal at huq@uchicago.edu or 703 702 9566.

Sincerely,

Aziz Huq

Frank and Bernice J. Greenberg Professor of Law

Aziz Huq - huq@uchicago.edu - 773-702-9566

Margaret Wells

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Writing Sample

I prepared the attached writing sample for my Criminal and National Security Law seminar at the University of Chicago Law School. For this assignment, I was tasked with writing a Supreme Court majority opinion and dissent based on a current issue in national security law. I was provided with the relevant statute, the Ninth Circuit opinion, and the Supreme Court briefs for the Petitioners, the Respondent, and United States to complete this assignment. To create a 12-page writing sample, I omitted the dissent. I received feedback from my school's writing coach.

Justice Kagan delivered the opinion of the Court.**I**

This dispute arises from a terrorist attack that occurred in the fall of 2015. At that time, Nohemi Gonzalez, a U.S. citizen, was studying abroad in Paris. On November 13th, three armed terrorists – Abdelhamid Abaaoud, Brahim Abdeslam, and Chakib Akrouh – stormed into the café where Nohemi was eating dinner with her friends and opened fire. Nohemi was killed in the gunfire, which was one part of a larger series of terrorist attacks in Paris on that day. These attacks tragically killed 130 people, and injured hundreds more. Shortly after the attacks, the Islamic State of Iraq and Syria (ISIS), a foreign terrorist organization, released a YouTube video and a written statement claiming responsibility.

YouTube is a social media platform that hosts third-party video content. YouTube allows users to make profiles, like and subscribe to content, and upload and watch videos. Based on an individual user’s profile and site history, YouTube’s algorithms recommend additional content designed to keep users on the site. In 2015, these recommendations appeared in a queue labeled “Up Next” that played automatically after a video ended.

The petitioners, Nohemi Gonzalez’s family and estate, filed a suit pursuant to the Anti-Terrorism Act (ATA) alleging that YouTube is directly and secondarily liable for

Nohemi's death. The petitioners' claims argue that YouTube's algorithms highlight ISIS-related content and recommend videos to users susceptible to ISIS' messages. As a result, the petitioners argue, YouTube spreads ISIS' violent propaganda and facilitates new member recruitment for the organization. The petitioners' complaint additionally provides evidence from the Paris attacks. They allege that two terrorists involved in the attacks frequently posted links on their social media accounts to ISIS recruitment videos available on YouTube. Moreover, the complaint states that one of the armed gunmen from the café, Abaaoud, appeared in an ISIS recruitment video in 2014.

The subject of this dispute is YouTube's immunity pursuant to the Communications Decency Act (CDA). Under the statute, an interactive computer service provider is immune from claims that treat it as the "publisher or speaker" of content created or developed by "another information content provider." 47 U.S.C. § 230(c)(1). Both the District Court and the Ninth Circuit found that the CDA immunized YouTube from this lawsuit. Without guidance from this Court, the Ninth Circuit has interpreted "publisher" to encompass "any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online." *Gonzalez v. Google LLC*, 2 F.4th 871, 892 (9th Cir. 2021) (citing *Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1170–71 (9th Cir. 2008) (*en banc*)). The lower courts determined that the petitioners' claims hold YouTube liable for its inability

to remove ISIS content from the platform, and as a result, the petitioners' claims treat YouTube as a publisher. *Id.*

The lower courts also found that YouTube's recommendations do not "create" or "develop" new content. YouTube is only immunized from content posted by third parties; however, the platform can face liability for information it creates or develops, even in part. The Ninth Circuit uses a material contribution test to determine whether a platform creates or develops content. *Gonzalez*, 2 F.4th at 892. This contribution "does not refer to 'merely . . . augmenting the content generally, but to materially contribute to its alleged unlawfulness.'" *Id.* (quoting *Roommates*, 521 F.3d at 1167–68). The Ninth Circuit recently held in *Dryoff* that algorithms that analyze and augment content do not materially contribute to the underlying third-party information. *Dryoff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1098 (9th Cir. 2019). Analogizing YouTube's recommendations to the algorithms in *Dryoff*, the Ninth Circuit held that YouTube was not liable for ISIS' videos' creation or development. *Gonzalez*, 2 F.4th at 894.

The Ninth Circuit is not the only court of appeals to have weighed in on § 230's meaning. In fact, since the CDA's passage in 1996, every circuit has developed precedent defining and interpreting the scope of an internet content provider's immunity for publishing third-party content. *See, e.g., Universal Commc'n Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413 (1st Cir. 2007); *Force v. Facebook, Inc.*, 934 F.3d 53 (2d Cir. 2019); *Henderson v. Source for Pub. Data, L.P.*, 53 F.4th 110 (4th Cir. Nov. 3, 2022) *Marshall's*

Locksmith Serv., Inc. v. Google, LLC, 925 F.3d 1263 (D.C. Cir. 2019). This Court has never weighed in on the Act's meaning, which has become an increasingly important issue as technology advances beyond what Congress could have possibly foreseen in 1996. We granted certiorari to clarify the scope of § 230(c)(1)'s immunity for publishers of third-party content.

II

This case presents a straightforward statutory interpretation question. We are charged with construing the CDA's immunity provision to determine if the text immunizes YouTube's actions. We hold today that the CDA's immunity extends to YouTube's recommendation algorithms.

We begin with the statute itself. Congress passed the CDA in 1996 to incentivize internet service providers to regulate obscene material online. *Force*, 934 F.3d at 78–79 (Katzmann, J., concurring in part). The Act aimed to balance this goal against imposing too much liability on web platforms, which many believed would harm technological development. *Id.* After considerable documented back and forth, Congress passed the CDA. *Id.* Congress' considerations surrounding obscenity culminated in CDA § 230(c) – “Protection for “Good Samaritan” blocking and screening of offensive material.” The parties' dispute centers around 47 U.S.C. § 230(c)(1) which reads: “No provider or user

of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”

To obtain immunity from civil liability under this provision, YouTube must meet three requirements. First, YouTube must be the “provider ... of an interactive computer service.” Second, the petitioners’ cause of action must treat YouTube as a “publisher or speaker.” Finally, the information out of which YouTube’s liability arises must be “provided by another information content provider.” 47 U.S.C. § 230(c)(1). This opinion proceeds taking each requirement in turn.

A

YouTube indisputably offers interactive computer services. The statute defines “interactive computer service” as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server.” 47 U.S.C. § 230(f)(1). To fall under this definition, the defendant merely needs to offer multiple people access to a server. Websites are quintessential interactive computer services because, as the respondent notes, “all data online is stored on servers.” Brief for Respondent at 22, *Gonzalez v. Google*, 143 S. Ct. 1191 (2023) (No. 21-1333). YouTube provides users all over the world simultaneous access to videos and other content uploaded to its site. As a result, YouTube is clearly covered by the statute’s plain language.

B

The CDA immunizes an interactive computer service provider from claims that treat it as a “publisher or speaker” of third-party content. 47 U.S.C. § 230(c)(1). Absent clear evidence to the contrary, we interpret the CDA using its plain meaning. *See, e.g., Sw. Airlines v. Saxon*, 142 S. Ct. 1783, 1788 (2022). “Publisher” refers to a party who “make[s] [information] generally known” or “disseminate[s] [information] to the public.” Brief for Respondent at 23. Treat means “to regard ... and act toward or deal with accordingly.” Brief for Respondent at 23. To hold YouTube liable for ISIS’ videos would be to treat YouTube as a publisher. Liability, in that case, attaches because YouTube broadcasts ISIS’ videos to the public. Any theory of liability that relies on YouTube’s dissemination of third-party information is immunized by the CDA.

“Publisher’s” plain meaning also extends to YouTube’s recommendations. These recommendations, at their core, are methods for promoting and organizing third-party content. The petitioners argue that the Act only immunizes YouTube from claims based on disseminating information. Brief for Petitioners at 26, *Gonzalez v. Google*, 143 S. Ct. 1191 (2023) (No. 21-1333). But the petitioners do not present a compelling distinction between disseminating information and promoting or organizing it. In fact, disseminating information necessarily includes selecting and organizing content. Publishers do not randomly broadcast information to the public: they choose what and how to publish. For example, a newspaper, which the petitioners concede is a publisher,

determines what content to publish and how to organize its pages. In our view, promoting and organizing content cannot be distinguished from disseminating information. As a result, the Act immunizes YouTube's recommendations.

Even the dissent's narrow statutory construction immunizes YouTube's recommendations. The Act's House and Senate materials make clear that Congress passed the CDA explicitly to overturn a New York state court decision that held a message board liable for defamation. Brief for Petitioners at 21–22. The petitioners argue that since Congress intended to overturn this decision, the term “publisher” in the statute refers to its narrow construction in defamation law. *Id.* But despite arguing that publication in defamation law is distinct from “publisher's” broad plain meaning, the petitioners do not offer a different, narrow construction of the term that would exclude YouTube's recommendations. A defendant in a defamation claim “publishes” information if he communicates the defamatory content to a third-party. *Id.* at 20. This is essentially the same definition as the one we offer above – disseminating information to the public – which we have already stated covers YouTube's recommendations.

Moreover, courts routinely hold publishers liable for defamation based on their organizational choices. The respondent points to a slew of cases where courts have held defendants liable for defamation based on how they choose to organize content. Brief for Respondent at 25–26. So even assuming YouTube's liability arises from the site's design choices, rather than its decision to broadcast third-party content, the result is the

same. Defamation tort law recognizes a publisher's liability for organizing content. Holding YouTube liable for how it organizes its pages and presents recommendations to users treats YouTube as a publisher.

Our decision today is rooted in the text. The dissent narrowly construes the term "publisher" based on a persuasive characterization of the Act's history. It is true that Congress passed the CDA to protect minors from obscenities online. Despite this narrow purpose, "Congress grabbed a bazooka to swat the *Stratton-Oakmont* fly." *Force*, 934 F.3d at 80 (Katzmann, J., concurring in part). The Act's broad language extends the CDA beyond its intended purpose. It is not our job to second guess whether this was Congress' intention, only Congress can clarify the Act's scope.¹ As a result, we hold that the term "publisher" encompasses YouTube's recommendations.

C

Finally, the CDA only immunizes YouTube from liability arising from information created or developed by third parties. *See* 47 U.S.C. § 230(c)(1). In other words, YouTube is not immunized by the statute for content it creates, in whole or in part. The dissent argues, in the alternative, that YouTube's recommendations do not merely disseminate third-party content, but create and send unique messages from the

¹ It is worth noting that Congress has extended and modified the CDA many times since its passage. During this time, circuit courts actively debated "publisher's" scope and determined that the Act conferred broad immunity on web platforms. Congress' inaction on this portion of the Act suggests to us that these circuits faithfully interpreted the Act's language. *See* Brief for Respondent at 30.

platform to its users. We agree with the dissent that YouTube is liable for the content it creates. However, we hold that YouTube's recommendations merely augment third-party content.

The CDA specifies that platforms are only immunized for content "provided by another information content provider." 47 U.S.C. § 230(c)(1). The statute later defines "information content provider" as "any person or entity that is responsible, in whole or in part, for the *creation or development* of information." 47 U.S.C. §230(f)(3) (emphasis added). This definition clarifies that a platform is responsible for the content it creates or develops, even if only in part. Thus, immunity turns on whether YouTube's recommendations create or develop the violent content.

In our view, YouTube does not create or develop ISIS-related content by highlighting the videos through its algorithms. We employ the same principles of statutory interpretation here as we do above, looking the statute's plain meaning. In ordinary parlance, "create" means "'to bring into existence" or to "make out of nothing and for the first time.'" Brief for the United States as Amicus Curiae in Support of Vacatur at 21–22, *Gonzalez v. Google*, 143 S. Ct. 1191 (2023) (No. 21-1333). YouTube does not create the ISIS content from which ATA liability arises. ISIS posts the content on YouTube's platform and YouTube is uninvolved in bringing the videos into existence.

“Develop” could be construed narrowly, as a close synonym to create. Brief for the United States at 22. On the other hand, “develop” can also mean “to promote the growth of” or “expand by a process of growth,” which might encompass YouTube’s tools that organize and recommend content. *Id.* In our view, the CDA uses develop as a close synonym to create. This best comports with adjacent sections of the statute. Any other interpretation would open web platforms up to liability whenever they organize or promote content and render the statute unusable.

First, adjacent sections of the statute suggest “develop” excludes tools for organizing and promoting content. The statute defines “information content provider” to include “access software providers.” 47 U.S.C. § 230(f)(1). The statute further defines “access software providers” as including “a provider of ... enabling tools that ... (C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.” 47 U.S.C. § 230(f)(4). As the government’s amicus persuasively notes, it would be silly for Congress to explicitly immunize enabling tools that “transmit” and “organize” content but then take that immunity away through the word “develop.” Brief for the United States at 23. YouTube’s recommendations essentially organize and transmit content. This definition suggests that YouTube’s algorithms fall explicitly within the statute’s scope.

Second, holding that YouTube develops third-party content through its recommendation algorithms would make the CDA unusable. YouTube’s algorithms

filter and organize content, promoting information to viewers based on their preferences. The respondent and the government note that all websites, including important search platforms, use algorithms to organize and filter results. Brief for the United States at 23; Brief for Respondent at 1–2. The dissent’s interpretation would render the statute meaningless by making platforms co-developers of *any* content they organize. There is no way that a site could avoid becoming a developer in this world, because even basic web-design choices organize content on the screen.

A narrow definition of “develop” best captures the statute’s goals, without making adjacent sections confusing and meaningless. Web platforms may be liable as authors for content they create. However, our interpretation forecloses the argument that YouTube’s recommendation algorithms develop third-party content by augmenting the videos’ reach. We therefore hold that YouTube is immunized from the petitioners’ claims.

III

The dissenting Justice compellingly describes the policy rationale driving his construction of the statute. We are sympathetic to the petitioners’ cause and recognize that social media sites are increasingly used by terrorist organizations to spread violent messages and recruit new members. *See Force*, 934 F.3d at 84–85 (Katzmann, J., concurring in part) (describing terrorist organizations’ frequent social media use). Our

telecommunications laws should incentivize websites to police extremist messages on their platforms.

On the other hand, we are equally concerned about a narrow ruling imposing too much liability on these platforms. The CDA is often called “the twenty-six words that created the internet” because immunity permitted web platforms to flourish. Brief for Respondent at 7. Algorithms are particularly critical to the modern internet, where the internet’s most basic functions, like Google search, rely on algorithms to process and promote information. We are worried about the unforeseen consequences of any other ruling that would potentially upend the careful balance Congress struck in the CDA.

It is important to stop the internet from proliferating terrorist messages. However, this Court should not determine the best mechanism for preventing the spread of this information. Congress is best equipped to handle these policy determinations. Since Congress passed the CDA, the internet has developed far beyond what Congress could have originally imagined. It is our job to interpret the plain meaning of the language Congress used in 1996 and apply it to today’s context. If this language needs updating or narrowing, it is Congress’ job to determine if and how to change the law.

The judgement of the Ninth Circuit is affirmed. *It is so ordered.*

Applicant Details

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 Middle Initial **J**
 Last Name **Wetterhahn**
 Citizenship Status **U. S. Citizen**
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California
Zip
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Country
United States

Contact Phone Number **3155234742**

Applicant Education

BA/BS From **Washington & Lee University**
 Date of BA/BS **May 2021**
 JD/LLB From **University of California at Los Angeles (UCLA) Law School**
http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=90503&yr=2011
 Date of JD/LLB **May 14, 2024**
 Class Rank **15%**
 Law Review/Journal **Yes**
 Journal(s) **UCLA Criminal Justice Law Review, Articles Chief**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Skye Donald**
UCLA Moot Court Honors Board

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

DAN WETTERHAHN

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June 12, 2023

The Honorable Jamar Walker
United States Courthouse
2400 West Avenue
Newport News, VA 23607

Re: Judicial Clerkship Application

Dear Judge Jamar Walker:

I am a rising third-year student at UCLA School of Law, interested in clerking for you beginning in the first term you are hiring for after May 2024, and any term after. It is my great aspiration to work as an Assistant United States Attorney. To that end I would like to learn all that I can about the function of the federal criminal justice system and the federal courts generally. There is no better way to accomplish this than to clerk in the chambers of a United States District Court judge. I spent last summer at the U.S. Attorney's Office for the Southern District of New York—this confirmed both my desire to return to the East Coast after I graduate and my dream of working as an AUSA. Clerking in Virginia would tremendously further both objectives and I am sure that I would be a good addition to your chambers. Further, during my undergraduate at Washington and Lee University I became very attached to the commonwealth and would treasure a chance to return.

My academic experiences have prepared me well for a clerkship in your chambers. I developed my excellent research and writing skills in writing my undergraduate honors thesis on punishment in international criminal law. My interest in criminal justice is also borne out in my participation in the UCLA Criminal Justice Law Review. This year I was a Staff Editor and next year I will be serving as Chief of Articles. Working on the journal has sharpened my attention to detail while allowing me to explore the cutting edge of developments in criminal law scholarship. My transcript also reflects my interest in federal criminal justice—notably in my affiliation with UCLA School of Law's Public Policy Program. Furthermore, my communication and advocacy skills have been honed in a Supreme Court Simulation last semester as well in my participation with Moot Court.

My professional experiences will also allow me to add value to your chambers. In a professional setting, I have pursued my interest in criminal justice as well as practiced research skills. As mentioned, last summer, I worked at the Criminal Division of the U.S. Attorney's office for the Southern District of New York. Much of my work at the U.S. Attorney's Office consisted of research for ongoing investigations—chiefly drawing up memoranda with my findings for use by supervising AUSAs. Additionally, I was fortunate enough to observe several criminal trials and participate in two, allowing me to see the impact of the judicial system in administering justice. This summer, I will continue to hone my professional skillset and experience as a Summer Associate in Baker McKenzie's Litigation Practice Group. Further, I will be externing in D.C.—likely at the DOJ—for my final semester.

In sum, I am confident that I have the skills to make a good contribution to your chambers if afforded the opportunity. Enclosed please find a copy of my résumé, transcript, writing sample and letters of recommendation from Professors Beth Colgan, Adam Winkler, and Noah Zatz. Thank you for your time and consideration.

Respectfully,

Dan Wetterhahn
Enclosures

DAN WETTERHAHN

12114 Idaho Avenue, Apt. 4, Los Angeles, California 90025 | wetterhahn2024@lawnet.ucla.edu | 315.523.4742

EDUCATION

UCLA School of Law | Los Angeles, California
J.D. Candidate, David J. Epstein Program in Public Interest Law & Policy May 2024 | GPA: 3.84 | Rank: Top 15%
Honors: Masin Family Academic Silver Award in Contracts (for the second highest super-sectional grade)
Mock Trial Fall Internal Competition, *Honorable Mention* (2021)
Moot Court: Moot Court Honors Board, *Problem Developer* (2023-), *Special Competitions Assistant* (2022-23),
Spring Internal Standby Ghost Competitor (2023), *UCLA Law Cyber Security Competition Judge*
(2023), *Fall Internal Standby Judge* (2022), *1L Skye Donald Competition Competitor* (2022)
Journals: UCLA Criminal Justice Law Review, *Chief of Articles* (2023-), *Staff Editor* (2023)

Washington and Lee University | Lexington, Virginia
B.A., *cum laude*, Philosophy with a Minor in Russian Language & Culture, May 2021 | GPA: 3.80
Honors: President’s List (GPA top 30% of class year) (2019, 2020, 2021) | Phi Sigma Tau, International
Philosophy Honor Society | Philosophy Major Honors | Edward Dodd Award (senior philosophy
major showing exceptional qualities)
Thesis: “More Than Just Victor’s Justice: A Defense of the Solely Retributive Character of Atrocity Crime
Punishment by International Criminal Tribunals”
Activities: Washington and Lee University Singers Touring Choir, *Baritone* (2018-21), *Student Manager*
(2020-21) | Washington and Lee Hillel, *Events Manager* (2020-21), *Shabbat Chair* (2019-20) |
Washington and Lee Bentley Productions, *Lead Role in “Priscilla Queen of the Desert”* (2018)

EXPERIENCE

Baker McKenzie Los Angeles, California
Summer Associate, Litigation Practice Group Summer 2023

United States Attorney’s Office, Southern District of New York, Criminal Division New York, New York
Summer Legal Intern May 2022-August 2022

- Assisted in two criminal trials from final pretrial conference to verdicts; prepared exhibits, participated in jury selection, and edited summations
- Performed and summarized legal research for Assistant United States Attorneys for use in ongoing investigations and trial proceedings
- Drafted internal memoranda and external briefs including compassionate release responses, foreign mutual legal assistance requests, criminal complaints, and sentencing submissions

UCLA El Centro, Labor and Economic Justice Clinic Los Angeles, California
Corporate Research Volunteer Fall 2021-Spring 2022

- Researched companies to aid the bargaining power of organized labor members in Los Angeles

Christian Worth for Delegate Lexington, Virginia
Deputy Field Organizer May 2019-November 2019

- Conducted direct outreach including door to door canvassing, speaking with hundreds of voters
- Recruited and trained campaign volunteers to increase voter contact and community engagement

Anthony Brindisi for Congress Utica, New York
Field Intern and Finance Intern February 2018-August 2018

- Conducted voter outreach including writing the campaign absentee voting guide
- Located and researched potential big dollar donors and wrote short biographies for use by the candidate

LANGUAGES AND INTERESTS

Intermediate proficiency in Russian
Enjoy French Republican History, Sailing, Rock Operas, Philosophy of Language, and Board Games

NAME: WETTERHAHN, DANIEL J
UCLA ID: 705859196
BIRTHDATE: 10/06/XXXX

**UNIVERSITY OF CALIFORNIA, LOS ANGELES
 LAW ACADEMIC TRANSCRIPT**

PAGE 1 OF 1

PROGRAM OF STUDY

ADMIT DATE: 08/23/2021
 SCHOOL OF LAW
 MAJOR: LAW

DEGREES | CERTIFICATES AWARDED
 NONE AWARDED

GRADUATE DEGREE PROGRESS

SAW COMPLETED IN LAW 666, 23S

PREVIOUS DEGREES

NONE REPORTED

CALIFORNIA RESIDENCE STATUS: NONRESIDENT**FALL SEMESTER 2021**

MAJOR: LAW

CONTRACTS	LAW 100	4.0	17.2	A+
INTRO LEGL ANALYSIS	LAW 101	1.0	0.0	P
LAWYERING SKILLS	LAW 108A	2.0	0.0	IP
MULTIPLE TERM - IN PROGRESS				
TORTS	LAW 140	4.0	16.0	A
CIVIL PROCEDURE	LAW 145	4.0	14.8	A-
	<u>ATM</u>	<u>PSD</u>	<u>PTS</u>	<u>GPA</u>
TERM TOTAL	13.0	13.0	48.0	4.000

SPRING SEMESTER 2022

LGL RSRCH & WRITING	LAW 108B	5.0	18.5	A-
END OF MULTIPLE TERM COURSE				
CRIMINAL LAW	LAW 120	4.0	16.0	A
PROPERTY	LAW 130	4.0	13.2	B+
CONSTITUT LAW I	LAW 148	4.0	16.0	A
FED CRIM SENTENCING	LAW 165	1.0	0.0	P
	<u>ATM</u>	<u>PSD</u>	<u>PTS</u>	<u>GPA</u>
TERM TOTAL	18.0	18.0	63.7	3.747

FALL SEMESTER 2022

CRIM PRO:INVESTIGTN	LAW 202	4.0	14.8	A-
EVIDENCE	LAW 211	4.0	16.0	A
PROB SOLV PUB INT	LAW 541	3.0	12.0	A
TRIAL ADVOCACY	LAW 705	4.0	0.0	P
	<u>ATM</u>	<u>PSD</u>	<u>PTS</u>	<u>GPA</u>
TERM TOTAL	15.0	15.0	42.8	3.891

SPRING SEMESTER 2023

FEDERAL COURTS	LAW 212	3.0	0.0	P
BUSINESS TORTS	LAW 252	2.0	7.4	A-
LABOR LAW	LAW 260	4.0	16.0	A
LAW & POL ECON DEBT	LAW 666	3.0	9.9	B+
SUPREME COURT SIMUL	LAW 727	2.0	8.0	A
CYBERSECURITY	LAW 962	1.0	3.7	A-
	<u>ATM</u>	<u>PSD</u>	<u>PTS</u>	<u>GPA</u>
TERM TOTAL	15.0	15.0	45.0	3.750

LAW TOTALS

	<u>ATM</u>	<u>PSD</u>	<u>PTS</u>	<u>GPA</u>
PASS/UNSATISFACTORY TOTAL	9.0	9.0	N/A	N/A
GRADED TOTAL	52.0	52.0	N/A	N/A
CUMULATIVE TOTAL	61.0	61.0	199.5	3.837
TOTAL COMPLETED UNITS	61.0			

MEMORANDUM

MASIN FAMILY ACADEMIC SILVER AWARD
 CONTRACTS, S. 7/8, 21F

-----END OF RECORD-----

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UCLA School of Law
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The following information is offered to assist in the evaluation of this student's academic record.

COURSE NUMBERS: (as of 2010) First year and MLS courses are numbered 100-199, advanced courses 200-499, seminars 500-699, experiential courses 700-799, externships 800-899, short courses 900-999. (1978-2010) First year courses are numbered 100-199, advanced courses 200-399, clinical courses 400-449, externships 450 – 499, and seminars 500 – 599.

CREDITS: Beginning 1978, credits are semester units, prior to that time, credits were quarter units.

EXPLANATION OF CODES FOUND TO THE RIGHT OF A COURSE ON OLDER TRANSCRIPTS

CODE	EXPLANATION
PU	Courses graded on a pass/Unsatisfactory/ No Credit basis
T1	First term of a multiple term course
2T	Final term of a multiple term course, unit total for all terms combined
TU	Final term of a multiple course graded on a Pass/Unsatisfactory/No Credit basis
UT	Final term of a multiple course graded on a Pass/Unsatisfactory/No Credit basis, unit total for all terms combined.

GRADE POINT AVERAGE (GPA) CALCULATION: The GPA is calculated by dividing grade points by graded units attempted. Transfer credits are not included in the UCLA GPA.

EXPLANATION OF GRADING SYSTEM
1995 – Present

Grade & Grade Points	JD, LLM and SJD Student Definitions	MLS Student Definitions
A+ = 4.3	Extraordinary performance	Extraordinary performance
A = 4.0 A- = 3.7	Excellent performance	Superior Achievement
B+ = 3.3 B = 3.0 B- = 2.7	Good performance	Satisfactorily demonstrated potentiality for professional achievement in field of study
C+ = 2.3 C = 2.0 C- = 1.7	Satisfactory performance	Passed the course but did not do work indicative of potentiality for professional achievement in field of study
D+ = 1.3 D = 1.0	Unsatisfactory performance	Grade unavailable for MLS students
F	Lack of understanding of major aspects of the course No credit awarded	Fail
P	Pass (equivalent of C- and above) Not calculated into the GPA	Satisfactory (achievement at grade B level or better)
U	Unsatisfactory (equivalent to grades D+ and D)	Grade unavailable for MLS students
NC	No credit (equivalent to a grade of F) No unit credit awarded	No credit (equivalent to a grade of F) No unit credit awarded
LI	Incomplete, course work still in progress	Grade unavailable for MLS students
I	Grade unavailable for JD, LLM and SJD students	Incomplete, course work still in progress
IP	In Progress, multiple term course, grade given upon completion	In Progress, multiple term course, grade given upon completion
W	Withdrew from course	Withdrew from course
DR	Deferred Report	Deferred Report

RANK: Until 1970, the School of Law ranked its graduates according to their final, cumulative grade point averages. Since that time, it has been the policy of the School of Law not to rank its student body. The only exceptions are:

- 1971 – 2015 - at the end of each academic year the top 10 students in the second- and third-year classes were ranked.
- 2016 – Present - at the end of each academic year the top 12 students in each class are ranked.
- 2009 – Present - the top ten percent of each LLM graduating class are ranked (by percentile, rather than numerically).
- The top ten percent of each JD graduating class is invited to join the Order of the Coif (a National Honorary Scholastic Society.)

HONORS:

2008 - Present - Masin Scholars – top 12 students at the end of the first year, prior to optional grade changes.

2013 – Present - Masin Gold Award (formerly Dean's Awards) – highest grade in each course graded on a curve. Masin Silver Award (formerly Runner-up Dean's Award) - second highest grade in each large course (40 or more students) graded on a curve.

ACCREDITATION: American Bar Association, 1952

CERTIFICATION: The Seal of the University of California, Los Angeles, Registrar's Office and the Registrar's signature.

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Previous Grading Scales

GRADE	DEFINITION
100-85	A or excellent performance (grades of 95 and above demonstrate extraordinary performance)
84-75	B or good performance
74-65	C or satisfactory performance
64-55	D or unsatisfactory performance
54-50	F or lack of understanding of major aspects of the course No unit credit awarded
P	Pass (Equivalent to grades of 65 and above) Not calculated in the GPA
U = 62	Unsatisfactory (Equivalent to grades of 64-55)
NC = 50	No Credit (Equivalent to grades of 54-50) No unit credit awarded
IP	In Progress, multiple term course, grade given upon completion
W	Withdrew from course

GRADE	DEFINITION
H (high)	A or excellent performance
HP (high pass)	B or good performance
P (pass)	C or satisfactory performance
I (inadequate)	D or unsatisfactory performance
NC (no credit)	F or lack of understanding of major aspects of the course. No unit credit awarded
CR (credit)	Pass, unit credit awarded for the course
NR (in progress)	In progress, multiple term course, grade given upon completion
W	Withdrew from course